

# **EXHIBIT 11**

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 Civil Action No. 7:17-cv-05915 NSR/LMS

4 -----x  
FRANKLIN BUONO,

5  
6 Plaintiff,

7 v.

8 POSEIDON AIR SYSTEMS, VICTORY AUTO  
9 STORES, INC., et al.,

10 Defendants.

-----x

11 May 2, 2018

12 10:02 a.m.

13 VIDEO-RECORDED DEPOSITION of  
14 OPRANDY'S FIRE & SAFETY EQUIPMENT, by  
15 BRIAN SCOTT, taken by the Parties Present,  
16 pursuant to Subpoena, held at the offices  
of Finkelstein & Partners, LLP, 1279 Route  
300, Newburgh, New York, before Abner D.  
Berzon, a Registered Professional  
Reporter, Certified Realtime Reporter and  
Notary Public of the State of New York.

1 A P P E A R A N C E S :

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TYCO FIRE PRODUCTS, sued as  
17 ANSUL, INC., and TYCO FIRE  
SUPPRESSION PRODUCTS, TYCO  
18 FIRE SUPPRESSION SYSTEMS  
19 BY: SANDRA R. STIGALL, ESQ.  
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20  
21 A L S O P R E S E N T :

22  
23 CHRIS HANLON, Videographer  
24 PATTY SCOTT  
25

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND  
AGREED, by and among counsel for the  
respective parties hereto, that the  
filing, sealing and certification of the  
within deposition shall be and the same  
are hereby waived;

IT IS FURTHER STIPULATED AND  
AGREED that all objections, except as to  
form of the question, shall be reserved to  
the time of the trial;

IT IS FURTHER STIPULATED AND  
AGREED that the within deposition may be  
signed before any Notary Public with the  
same force and effect as if signed and  
sworn to before the Court.

\* \* \*

1 THE VIDEOGRAPHER: Good morning.  
2 We are going record at 10:02 on May  
3 2nd, 2018. Please note that the  
4 microphones are sensitive and may pick  
5 up whispering, private conversations,  
6 and cellular interference.

7 Please turn off all cellphones  
8 or place them away from the  
9 microphones as they can interfere with  
10 the deposition audio.

11 Audio and video recording will  
12 continue to take place unless all  
13 parties agree to go off the record.

14 This is Media Unit No. 1 of the  
15 video-recorded deposition of Brian  
16 Scott, taken by counsel for defendant,  
17 in the matter of Franklin Buono vs.  
18 Tyco Fire Products, LP, filed in the  
19 U.S. District Court, Southern District  
20 of New York, Case No. 7:17-cv-05915.

21 This deposition is being held at  
22 Finkelstein & Partners, located at  
23 1279 Route 300, Newburgh, New York.

24 My name is Christopher Hanlon.  
25 I'm from the firm of Veritext. I'm

1 the videographer today. Our court  
2 reporter is Abner Berzon, also from  
3 Veritext. I'm not related to any  
4 party in this action, nor am I  
5 financially interested in the outcome.

6 At this time, I would ask  
7 counsel to please state your  
8 appearances for the record.

9 MR. FROMSON: For the plaintiff,  
10 Franklin Buono. My name is Kenneth  
11 Fromson of the law firm of  
12 Finkelstein & Partners.

13 MS. MOLINEAUX: Shelley  
14 Molineaux, on behalf of Worthington.

15 MS. STIGALL: Sandy Stigall, on  
16 behalf of Tyco Fire Products.

17 Thank you.

18 Are you counsel?

19 MS. SCOTT: No.

20 MS. STIGALL: We also -- in  
21 addition -- well, do we want to go  
22 ahead and introduce Patty?

23 MR. FROMSON: Sure.

24 MS. STIGALL: Patty Scott is  
25 also in attendance here today, in

1           addition to the deponent, Brian Scott.

2           THE VIDEOGRAPHER: Thank you.

3           At this time, our court reporter can  
4           swear in our witness and we can  
5           proceed.

6  
7           B R I A N       S C O T T , having first  
8           been duly sworn by Abner D. Berzon, a  
9           Notary Public of the State of New  
10          York, was examined and testified as  
11          follows:

12       EXAMINATION BY MS. STIGALL:

13          Q.       Mr. Scott, could you spell your  
14          first, middle, and last name?

15          A.       Brian, B-r-i-a-n, middle initial  
16          E, last name Scott, is S-c-o-t-t.

17          Q.       What is your present home  
18          address?

19          A.       5 Lake Ridge, two words, Drive,  
20          Middletown, New York, 10940.

21          Q.       And are you one of the owners of  
22          Oprandy's?

23          A.       I am the sole owner present.

24          Q.       What is the present location of  
25          Oprandy's?

1           A.       49 Brookline, B-r-o-o-k-l-i-n-e,  
2       Avenue, Middletown, New York 10940.

3           Q.       And we're here today concerning  
4       an incident that occurred at Oprandy's on  
5       February the 12th, 2016. Did that  
6       incident occur at that Brookline address?

7           A.       Yes.

8           Q.       Mr. Scott, do you understand  
9       that you're here today pursuant to a  
10      subpoena issued to have you testify at a  
11      deposition in this civil action?

12          A.       Yes.

13          Q.       And I'm going to show you what  
14      we will mark as the next consecutive  
15      deposition exhibit here in a minute, and  
16      just let me ask you if that's the subpoena  
17      that you received that prompted your  
18      attendance here today?

19          A.       Yes, it is.

20                 MS. STIGALL: Okay. If we could  
21      go ahead and mark that Defendant's  
22      Exhibit 10. I think we stopped at 9  
23      yesterday. I don't know if we have it  
24      in your notes, Shelley, but that's  
25      what I have.



1 MS. MOLINEAUX: Yeah, I think  
2 you're right here.

3 (Defendant's Exhibit 10,  
4 subpoena, marked for identification,  
5 this date.)

6 Q. Let me ask you: Is it your  
7 understanding, or do you understand, that  
8 you would have a right to have legal  
9 counsel for you --

10 A. Yes.

11 Q. -- here today?

12 And you've decided not to do  
13 that?

14 A. Correct.

15 Q. Alright. What I think I'd like  
16 to do first -- well, let's go over some  
17 preliminary matters. Have you ever had  
18 your deposition taken before?

19 A. No.

20 Q. Do you understand that the court  
21 reporter is going to take down what you're  
22 saying in written form and the  
23 videographer is taking a video of you as  
24 you testify?

25 A. Yes.

1 Q. Do you understand this is much  
2 like testifying in court in that you're  
3 under penalty of perjury --

4 A. Yes.

5 Q. -- like you would be in court --

6 A. Yes, I understand.

7 Q. -- and sworn to tell the truth?

8 A. Yup.

9 Q. Can I ask you -- sometimes I get  
10 a little turned around in my questions --  
11 if I ask you a question and you don't  
12 understand the answer, would you please  
13 tell me and I'll try and rephrase it?

14 A. Yes. Okay.

15 Q. As far as getting a good record  
16 here today, one of the things that's  
17 important is that I completely finish my  
18 sentence before you answer. And I know,  
19 in normal conversation, a lot of times we  
20 can anticipate what the question is, and I  
21 have a bad habit --

22 A. I'm good at that myself, yes.

23 Q. -- I want to jump right in. And  
24 in order that the court reporter can get a  
25 good record here today, if we can both try

1 our best to let the other person finish  
2 speaking before we respond --

3 A. Okay.

4 Q. -- or before I ask another  
5 question.

6 If at any time during this  
7 deposition you feel that you need a  
8 break -- for any reason whatsoever --  
9 please just tell us and we'd be more than  
10 happy to allow you to take a break.

11 A. Okay.

12 Q. The only thing -- the only time  
13 we really don't want a break is, say, I've  
14 asked a question and you haven't answered  
15 it yet. We just need to answer the  
16 pending question and then we take the  
17 break.

18 A. Okay.

19 Q. Are you under any type of  
20 medication, drug, alcohol, anything  
21 whatsoever today, prescription medication,  
22 anything, that would hamper your ability  
23 to answer completely and truthfully?

24 A. No.

25 Q. I think what I want to do first,

1 before we get into the deposition, is to  
2 go over -- and I understand this is an  
3 extensive list of exhibits, of items that  
4 you were asked to produce at the  
5 deposition here today --

6 A. Okay.

7 Q. -- and so we can talk about--  
8 I'm about read ready to sneeze -- what you  
9 brought and --

10 MS. SCOTT: Uh-huh.

11 A. Uh-huh.

12 Q. -- if there's anything that you  
13 maybe have that, for whatever reason, you  
14 didn't bring today.

15 So --

16 A. Yeah, let me have that. That's  
17 the same copy I've --

18 Q. I was going to say --

19 A. No, I got mine.

20 Q. Okay.

21 MR. FROMSON: Thank you.

22 Q. Number 1 is all photographs of  
23 the scene where Mr. Buono's accident  
24 occurred on February 12th, not limited to  
25 photos of the area where the accident

1 occurred, the equipment and the tools.

2 Did you bring any photographs  
3 with you here today?

4 A. No.

5 Q. Do you have any photographs  
6 other than the photographs that were taken  
7 by OSHA when they investigated the  
8 incident?

9 A. No, I have no photos.

10 Q. You didn't take any photos on  
11 your phone or --

12 A. I did, but I don't have them.

13 Q. Okay.

14 A. I was -- I was told to basically  
15 look at 'em and delete 'em.

16 Q. When did you delete them?

17 A. Probably about, pshwew, maybe a  
18 month, a month and a half after.

19 Q. And who told you to delete them?

20 A. One of my -- one of my vendors  
21 who I deal with that in Jersey happened to  
22 be a retired police chief out of Jersey  
23 and we got talking with this -- you know,  
24 it's all in the network, all the guys  
25 talk, one of the vendors --

1 Q. I understand.

2 A. -- who are very supportive, and  
3 he says, "If you have any pictures on  
4 you," he says, "You better just get rid of  
5 them," he says, " just delete them," and  
6 plus, I don't want to look at them. It  
7 was just a -- two years is enough now.  
8 It's just...

9 Q. So is it your testimony here  
10 today that you have no photographs of the  
11 scene where the accident occurred or  
12 equipment or tools in your possession,  
13 electronically or whatever --

14 A. No.

15 Q. -- today?

16 A. No.

17 Q. The second item is all documents  
18 used by Oprandy's to train employees  
19 concerning the filling of tanks with  
20 compressed air, the filling of tanks with  
21 agent or hydrotesting tanks prior to the  
22 date of the incident. I do see a tab  
23 thing here that says "Training" on it, but  
24 you know what? Let me do this. Let me  
25 hand you the documents --

1           A.       Okay.

2           Q.       -- that I just received, and if  
3       you could pull out for me what would have  
4       to do with the -- what would be responsive  
5       to that inquiry regarding training  
6       documents.

7           A.       Well, basically the -- the  
8       training with Chris Foust was basically an  
9       in-house procedure that I trained him.  
10      There is really a -- there is a procedure  
11      from Poseidon, but I had my own procedure,  
12      which I trained him on. I -- that's the  
13      way I was taught and that's the way I just  
14      rolled it over to him. As far as  
15      documentation, I had some here. I don't  
16      know if I'll find it. The employee  
17      handbook. Yeah, I don't have it here.  
18      But, anyway...

19                   Basically, it was -- it was just  
20      air only. I mean, this -- yeah.

21           Q.       Okay. But let me -- okay. Do  
22      you have any documents to produce today?  
23      Were there any documents that showed  
24      training Christopher Foust or -- I'm  
25      including in that Mr. Buono -- received

1 prior to the incident concerning the fire  
2 suppression equipment and -- or --  
3 concerning filling of tanks with  
4 compressed air, tanks with air. I thought  
5 I saw something earlier. If you want me  
6 to --

7 A. I just --

8 MS. SCOTT: It is there. I gave  
9 it to you.

10 Q. You want me to go ahead and look  
11 through that and see if I see anything  
12 that's responsive?

13 A. Let me see if I can find it.  
14 You know where that it is, Patty?

15 Q. I know there's a lot here. So,  
16 I mean, let me just go through this a bit  
17 at a time. These, I think, where letters.  
18 So I don't think it's -- it may be in one  
19 of the other files.

20 Can you hand me the other  
21 documents and I'll --

22 A. Okay.

23 Q. -- look through it quickly and  
24 see if I can find it in there.

25 I am seeing three documents so



1 far -- maybe this would also include -- be  
2 included. There's an employer copy, "Keep  
3 file in employee's personnel file." It's  
4 an acknowledgment that Chris received  
5 Oprandy's Fire & Safety Employee Handbook.

6 A. Correct.

7 Q. And it looks like, from the  
8 document he signed, that he received the  
9 employee handbook on 8/17/2015 --

10 A. That's correct.

11 Q. -- is that correct?

12 I'm going to set that aside --

13 A. Okay.

14 Q. -- because we'll maybe just put  
15 these together.

16 Then -- where did I just put the  
17 other one? -- there is a document, it  
18 looks like a letter, it's "Re: Revised  
19 Shop Procedures, to certify that  
20 Christopher Foust has been refamiliarized  
21 with shop procedures and the layout of the  
22 new facility, he's comfortable with the  
23 handing of extinguishers." That looks to  
24 be dated on November 10th, 2015.

25 A. Correct. That's just when we

1 moved into our -- we bought -- we  
2 purchased -- we just moved into Brookline  
3 Avenue in August. We moved in 1st of  
4 November and that was a revised copy of  
5 new procedures.

6 Q. And then there's a document  
7 dated July 23rd, 2013, Re: Air Compressor  
8 Cascade System Training to certify that,  
9 on July 23rd, 2013, Christopher Foust was  
10 properly trained on the correct filling  
11 procedure for SCBA cylinders?

12 A. Correct. That was at my old  
13 location in Florida, as you can see by the  
14 address.

15 Q. And then after that, I actually  
16 have the Oprandy's Fire & Safety Equipment  
17 Hazard & --

18 A. Handbook --

19 Q. -- Communications Handbook.

20 A. -- Hazard Communications,  
21 correct.

22 Q. Does the document that's dated  
23 July 23, 2013 and the addendum, I guess,  
24 do those relate to training concerning the  
25 cascade system?

1           A.       Yes.

2                   MS. STIGALL:   What I think I'm  
3                   going to go ahead and do is put these  
4                   documents -- that's, one, two -- three  
5                   separate pages -- and then we add the  
6                   Oprandy's Fire & Safety Equipment  
7                   Program -- and we're going to put  
8                   those together as the next consecutive  
9                   exhibit, which would be Deposition  
10                  Exhibit --

11                  THE WITNESS:   11.

12                  MS. STIGALL:   -- 11.

13                  Can we possibly get a stapler in  
14                  here, because once I start putting  
15                  these together get, I am going to get  
16                  them messed up, I'm afraid.  We'll go  
17                  off the record for a minute.

18                  THE VIDEOGRAPHER:  Sure.  The  
19                  time is 10:18 and we're going off the  
20                  record.

21                  (Defendant's Exhibit 11, various  
22                  documents related to safety  
23                  procedures, marked for identification,  
24                  this date.)

25                  (Pause.)

1 THE VIDEOGRAPHER: The time is  
2 10:20. We're back on the record.

3 BY MS. STIGALL:

4 Q. Regarding the items that you  
5 were to bring with you today, training  
6 records, the number 2, documents used to  
7 train Oprandy's, are there any other  
8 documents that would be responsive, other  
9 than these pages that I just marked as  
10 Defendant's Exhibit 11?

11 A. No.

12 Q. And let me just give you a for  
13 example. And I think you said you trained  
14 Chris on the Poseidon system?

15 A. Correct.

16 Q. Was -- was there any piece of  
17 paper, any document in that training, that  
18 he reviewed or that you had him review as  
19 a part of his training on the Poseidon  
20 SYSTEM?

21 A. In regards to the operation of  
22 it?

23 Q. Yes. In regards to the filling  
24 of tanks with compressed air, was there  
25 any document used or shown to him?

1           A.       No.   Basically, the  
2       documentation was, from what I know of,  
3       how to use it.   I just relayed that -- as  
4       the trainer, I just relayed that to him.

5           Q.       Did Chris at any time see any  
6       owner's guide or product manual or service  
7       manual, technical manual, relating to the  
8       air filling system?

9           A.       Not that I know of.

10          Q.       You never showed one?

11          A.       I never showed one to him.

12          Q.       So, to your knowledge --

13          A.       To my knowledge, correct.

14          Q.       And we'll go over that training  
15       a little bit later.

16          A.       Yeah.

17          Q.       But right now, it's probably  
18       better I just go down my list on items and  
19       then we'll take it from there.

20                 MR. FROMSON:   Can I make a  
21       suggestion, just along that line of  
22       questioning?   Can you ask him whether  
23       he possessed one, understanding that  
24       he didn't show him one, not to his  
25       knowledge.   I don't know if he had one

1 to show him.

2 MS. STIGALL: Yeah, I -- can I  
3 go into that later?

4 MR. FROMSON: Absolutely.

5 Q. Well, do you have any manuals  
6 related to the Poseidon system --

7 A. I have --

8 Q. -- I'm talking about?

9 A. I have the book from Poseidon  
10 that I think OSHA took at the time of the  
11 accident, because I cannot put my fingers  
12 on it. I -- maybe -- umm -- maybe I  
13 should say this now, but that compressor  
14 was purchased by Poseidon, but built by --  
15 I did not purchase it from Poseidon.

16 Q. Yeah. And we'll go into --

17 A. Okay. We'll go into that later.

18 Q. -- all that later.

19 A. I think when this all happened,  
20 I have actually a three-ring binder, has  
21 manuals, the specs on it, that I think  
22 OSHA has it, because we can't find it.

23 Q. Okay. And just to clarify, did  
24 the binder and the items in it just relate  
25 to the compressor, or did they also relate

1 to, for example, the cascade system, is  
2 which -- you know, is the tanks that are  
3 connected to it?

4 A. Yes.

5 Q. Was it the whole ball of wax?

6 A. The whole ball of wax, because  
7 it was -- they're both -- it's two  
8 separate items, but they both work  
9 together.

10 Q. And we'll go over those later,  
11 but is your testimony here today that you  
12 currently don't -- you had those items  
13 before, you think they maybe went to OSHA,  
14 but you no longer have any manuals, specs,  
15 documents relating to the workings, the  
16 service or what -- anything being the  
17 Poseidon system?

18 A. Correct. Yes.

19 Q. Number 3 is documents -- well,  
20 number -- number 3 is documents relating  
21 to training Christopher Foust or plaintiff  
22 prior to the incident on fire suppression  
23 equipment. And that would be including  
24 documents used to train them regarding the  
25 design, installation, testing, and

1 servicing of fire suppression equipment.

2 A. I wasn't trained.

3 Q. Well, are you saying plaintiff  
4 wasn't trained?

5 A. Correct.

6 Q. Okay. So there would be no  
7 documents about Mr. Buono's training,  
8 because he wasn't trained on fire  
9 suppression --

10 A. Correct.

11 Q. -- systems?

12 What about Christopher --

13 A. Same thing.

14 Q. -- Foust?

15 He -- he didn't go out into the  
16 field and test or service fire  
17 suppression --

18 A. That's correct.

19 Q. -- equipment?

20 A. He did not.

21 Q. Who did that?

22 A. I did.

23 Q. Did Christopher Foust ever see,  
24 or did you ever show him, a, for  
25 example -- did you ever show him a ProTex



1 manual relating to the design,  
2 installation, testing and servicing of a  
3 ProTex system?

4 A. No.

5 Q. Do you have those in your  
6 possession?

7 A. I have to keep my manuals,  
8 because I'm a ProTex distributor, so I  
9 always have the service manuals.

10 Q. And you have all the up-to-date  
11 manuals?

12 A. Yes, ma'am.

13 Q. To your knowledge, did  
14 Christopher Foust ever see those ProTex  
15 manuals?

16 A. To my knowledge, no.

17 Q. And when I say "see", I mean  
18 actually open 'em up and review them.

19 A. No.

20 Q. To your knowledge, did plaintiff  
21 ever review those ProTex manuals?

22 A. No.

23 Q. Let's switch to Pyro-Chem. Did  
24 Christopher Foust ever see a technical  
25 manual regarding the Pyro-Chem Kitchen

1 System?

2 A. No.

3 Q. Did Mr. Buono?

4 A. No.

5 Q. Do you have in your possession  
6 manuals for Pyro-Chem Kitchen Fire  
7 Suppression --

8 A. Yes, I do.

9 Q. -- Systems?

10 What manuals do you have in your  
11 possession regarding Pyro-Chem systems?

12 A. First, I have the service  
13 manuals from my training of Pyro-Chem,  
14 ProTex, and all the systems that are  
15 available to be serviced, and I also have  
16 a parts manual for parts, liquid, any  
17 components that go the operation of the  
18 systems.

19 Q. And you said from your training  
20 on Pyro-Chem. Where did you get your  
21 training on Pyro-Chem?

22 A. I got a training from an outside  
23 agency. It's a husband and wife. They  
24 train people in my industry around the  
25 country. I am certified every three

1 years. I have been since 1992, just to  
2 stay up on the standards and OSHA, or  
3 NFPA, and, you know, all the requirements.

4 Q. Who -- can you tell me who they  
5 are?

6 A. Sure. It's called FPC, Fire  
7 Protection Consultants, out of Baltimore,  
8 Maryland. The gentleman's name is Edward  
9 O'Brien.

10 Q. Are they affiliated or a company  
11 that's related to Heiser ProTex?

12 A. I don't know if they're -- I  
13 can't say they're actually affiliated, but  
14 they have the knowledge and the  
15 qualifications to do outside training  
16 based on what the manufacturers tell them,  
17 whether it's Ansul, Amerex, Kidde. But  
18 they have the -- they have the material  
19 from the manufacturers of -- or the design  
20 companies, and they just train outside.  
21 They just train on the outside.

22 Q. Did -- but they're a separate  
23 company from Heiser ProTex?

24 A. Yes. Yes.

25 Q. And they're a separate company

1 from Ansul or Tyco --

2 A. Yes.

3 Q. -- Fire Products?

4 Have you ever gone through  
5 Heiser ProTex training?

6 A. Yes, I have. I'm a Heiser --  
7 Heiser is the -- my distributor, ProTex is  
8 the manufacturer of the system and I am  
9 the -- I'm a Heiser -- a ProTex  
10 distributor since 1995?

11 Q. That's an authorized  
12 distributor --

13 A. Correct.

14 Q. -- correct?

15 A. Correct.

16 Q. Are you a Pyro-Chem distributor?

17 A. I'm not a distributor. I'm a  
18 dealer. There's a difference.

19 Q. What's -- okay. What is that?

20 A. The difference is that -- just  
21 to maybe familiarize your-- quickly here,  
22 a Pyro-Chem and a ProTex system are  
23 identical. It's just that Pyro-Chem  
24 designed the system, ProTex is a spinoff  
25 of Pyro-Chem, same liquid, same control

1 head, same -- just a different labeling,  
2 meets the UL 300 standards for kitchens,  
3 but being that I'm a ProTex distributor, I  
4 can buy different parts from Pyr-- through  
5 Heiser of Pyro-Chem, but I can't buy a  
6 whole use. I can buy a tank but not a  
7 complete system, but I'm a dealer. If  
8 they -- they call it a dealership, instead  
9 of a distributor.

10 Q. So am I correct that you are  
11 able to, through channels, obtain parts  
12 and work on Pyro-Chem systems, but you're  
13 not a Pyro-Chem distributor?

14 A. Correct. I'm a dealer. Yes.

15 Q. Right. But you're not an auth--

16 A. Correct.

17 Q. -- you don't have a contract  
18 where you're --

19 A. No.

20 Q. -- an authorized distributor?

21 And you haven't been trained,  
22 say, in Marinette or specifically by  
23 Pyro-Chem?

24 A. No, but I've been trained  
25 from --

1 Q. Yes.

2 A. -- Ed O'Brien --

3 Q. Right.

4 A. -- to --

5 Q. At --

6 A. -- service -- it's a service --

7 Q. -- FPC?

8 A. Right.

9 Q. But just -- just so I keep the  
10 record straight, you have not been trained  
11 by Tyco --

12 A. Correct.

13 Q. -- Fire Products regarding  
14 Pyro-Chem?

15 A. Correct.

16 Q. So you have these manuals  
17 relating to -- I'm just trying to  
18 summarize.

19 A. Sure. Go ahead.

20 Q. So you have these manuals  
21 relating to Pyro-Chem systems and ProTex  
22 systems, but those documents were not  
23 reviewed by either Christopher Foust or  
24 Frank Buono?

25 A. Correct. There would be no

1 reason.

2 Q. And they weren't trained on  
3 those --

4 A. Correct.

5 Q. -- systems?

6 So you're not producing anything  
7 as to number 3 --

8 A. Correct.

9 Q. -- number 4 maybe redundant, to  
10 a certain extent, and all documents  
11 related to the purchase, servicing,  
12 operation or repair of the Poseidon air  
13 filling system being used on February  
14 12th. I think we already talked about the  
15 binder that you had --

16 A. Correct.

17 Q. -- had before?

18 A. Correct.

19 Q. Do you have any documents that  
20 are related to the purchase of that  
21 system?

22 A. No, I don't. I -- no, I don't.

23 Q. Okay.

24 A. I bought it -- I bought it as a  
25 used system.

1 Q. And who did you buy it from him?

2 A. I brought it -- I'm a past fire  
3 chief of the -- of a fire department in  
4 the same town and they --

5 Q. Middletown?

6 A. Or it's in Howells, New York.  
7 It's Howells Fire District. They bought  
8 it new from Poseidon in 1989 when I was a  
9 member. We upgraded it, the air system,  
10 in 2000, it was available for sale, I  
11 bought it from the Howells fire district.  
12 When I bought it, I bought the compressor,  
13 I bought the four tanks, the regulator,  
14 all the main -- and the service manuals.  
15 And it was serviced from them and  
16 Poseidon, on a regular basis, it has to be  
17 serviced and do the air testing, and  
18 everything like that, and was done by  
19 Poseidon.

20 Q. When was the last time prior to  
21 the February 12th, 2016 incident that that  
22 system was serviced?

23 A. Well, the compressor -- without  
24 me looking at it, I want to say 2014  
25 maybe. It has to be serviced once a year,



1 minimum once a year. I want to say  
2 either '14 or '15, before we moved. That  
3 was just on the compressor. As far as the  
4 tanks, there really is no service on  
5 those.

6 Q. And was there ever any service,  
7 since you bought it, on the -- I think you  
8 said you had the compressor, you had the  
9 tanks, and you had the regulator.

10 A. Correct.

11 Q. Was there ever any service on  
12 the regulator?

13 A. (Nodding)

14 (Discussion held off the  
15 record.)

16 A. No.

17 Q. And, you know, I should have  
18 said that at the beginning --

19 A. "Yes" or "no".

20 Q. -- and I usually always say it,  
21 although we have the video that's catching  
22 this up and down, and side by side, we  
23 need to get the record?

24 MS. STIGALL: And thank you,  
25 court reporter, for the...

1           Q.       Do you have in your possession,  
2       because that was one of the documents,  
3       types of documents asked on number 4,  
4       documents in your possession showing the  
5       servicing the Poseidon air filling system?

6           A.       No. I have no records in my  
7       possession.

8           Q.       On the day of the incident,  
9       was -- when the tank was being filled, was  
10      the equipment that was being used that  
11      compressor and accompanying tanks and  
12      regulator that were purchased from you  
13      from the Howells Fire Department?

14          A.       Uh-hum.

15          Q.       Those items always stayed  
16      together?

17          A.       Correct.

18          Q.       And, I'm sorry, what year did  
19      you say you purchased it?

20          A.       2000.

21          Q.       I had that written down, but I  
22      wasn't sure.

23                   What was the purpose of  
24      purchasing it? What were you going to use  
25      it for?

1           A.       Well, A) It's a -- the  
2       compressor and the air system is for  
3       filling air packs, for SCBAs, the fire  
4       department's use, because being in the  
5       fire business of the DOT retest facility,  
6       and I still can still fill bottles. I  
7       send them out now. It's that you have to  
8       fill bottles. It's -- it's special  
9       breathing air -- special breathing air  
10      goes through a filter process and  
11      everything else.

12          Q.       So, prior to this incident,  
13      other than filling these test cylinders  
14      with the Poseidon system, what other uses  
15      did you put that system to, where were you  
16      filling SCBAs?

17          A.       Up until this, no.

18          Q.       What did you use the Poseidon  
19      compressor, bottles, regulator for from  
20      the time you purchased it in 2000 to the  
21      date of this incident?

22          A.       I -- what I used it for?

23          Q.       Yeah.

24          A.       I used it for filling air  
25      pack -- or SCBA bottles.

1 Q. Okay. That's what -- okay.

2 A. SCBAs, Self-Contained Breathing  
3 Apparatus, air packs, Scott packs.

4 Q. And you did that for the fire  
5 department?

6 A. Fire departments, industrial  
7 accounts, whoever needed it, when -- at  
8 any given time.

9 Q. So am I using the right term to  
10 say that you're like an air filling  
11 facility or -- what's the correct term?

12 A. Correct, air filling.  
13 (Indicating). It's part of the industry.

14 Q. So you were filling SCBA bottles  
15 for the fire department?

16 A. For the fire service or  
17 industrial accounts.

18 Q. How about for dive operations or  
19 anything like that?

20 A. No. I -- it's the same grade of  
21 air, but I didn't have the adaptors. I  
22 don't -- I never filled any S-- for -- for  
23 dive, no.

24 Q. So you were filling SCBA bottles  
25 for the fire department and for

1 industrial --

2 A. Industrial accounts.

3 Q. And then am I correct that you  
4 were also using it to fill cylinders that  
5 you would use to go out and test systems?

6 A. Correct. Correct.

7 Q. Was that -- is that it, or is  
8 there any anything else you used the  
9 system for?

10 A. No, that's it.

11 Q. From the time you purchased that  
12 system in 2000 to the date of the  
13 incident, other than -- did you do the  
14 work in filling SCBAs and --

15 A. Yes. Yes.

16 Q. Anybody else?

17 A. Chris Foust, who I trained.

18 Q. Anybody else?

19 A. No.

20 Q. And I'm kind of diverging from  
21 the documents, but some of these things  
22 are leading certain ways, so -- I'm going  
23 to get back to the documents --

24 A. Okay.

25 Q. -- realizing that I may follow

1 up on some of this later.

2 A. That number 4 actually explains  
3 about that air compressor, if you look at  
4 that air compressor, and I explained this  
5 right to OSHA that morning, that air  
6 compressor wasn't even hooked up  
7 electrically, but it's an integrated part.  
8 You have to have the compressor to fill  
9 the air bottles.

10 Q. The bottles were hooked up?

11 A. The bottles were hooked up.  
12 That was it. But no electric to it and  
13 that's the reason why in the beginning I  
14 was a little hesitant on giving OSHA the  
15 manual. I says, there's -- there's  
16 nothing -- there's no electric. Here,  
17 follow it. There's no --

18 Q. But your -- you -- you seem to  
19 remember giving them the manual --

20 A. Yes.

21 Q. -- for the Poseidon?

22 But they didn't take the system  
23 itself?

24 A. No.

25 Q. All documents -- number 5: All

1 documents related to the purchase,  
2 servicing, operation, or repair of any  
3 regulator used at Oprandy's when filling  
4 tanks with compressed air or agent in  
5 2016.

6 So I'm -- I think 4 we kind of  
7 made it cover the regulator, but let's  
8 just say this is specifically as to the  
9 regulator.

10 A. Correct.

11 Q. I'm assuming, since you don't  
12 have any documents that have to do with  
13 the purchase of the air filling system and  
14 the regulator came with it, you don't have  
15 any documents about the --

16 A. No documentation, no.

17 Q. -- no documentations of the  
18 purchase?

19 Did you at any time -- and I  
20 think I asked this before, but let's just  
21 make sure. At any time after you  
22 purchased the regulator with the air  
23 filling system, did you ever at any time  
24 service or calibrate the regulator?

25 A. No.

1 Q. So you don't have any service  
2 records on the regulator?

3 A. No service records -- no service  
4 records on the regulator, correct.

5 Q. And then I'm just going to close  
6 the loop, because it says "repair". Would  
7 it be correct that you never did any sort  
8 of repairs on the regulator since you  
9 purchased it in 2000?

10 A. That's correct, no repairs.

11 Q. So as to number 4 -- number 5,  
12 you have no responsive documents?

13 A. No. No documents.

14 Q. Number 6, all documents related  
15 to the training Christopher Foust or  
16 plaintiff received regarding hydrotesting  
17 or filling tanks with compressed air and  
18 agent prior to February 12th, 2016. Other  
19 than what we already marked --

20 A. Uh-hum.

21 Q. -- as a deposition --

22 A. Correct.

23 Q. -- deposition exhibit -- I think  
24 it was 9 or 10 -- do you have any other  
25 documents regarding training of



1 Christopher Foust regarding hydrotesting  
2 or filling of tanks with compressed air  
3 and agent.

4 A. No, nothing, except for what I  
5 gave you for number 2.

6 Q. And --

7 A. As far as the -- the  
8 testing -- and it says right in number  
9 2 -- that the tank was a DOT tank, made by  
10 Worthington, that I am not a DOT retest  
11 facility, so he had no training on  
12 hydrotesting those cylinders, because I  
13 don't have the -- you have to have a  
14 license with DOT, and I don't have it, so  
15 there would be no training, either way.

16 Q. Did Christopher Foust do  
17 hydrotesting of tanks at your facility?

18 A. Yes, but they were not tanks.  
19 They were fire extinguisher cylinders and  
20 at low pressure --

21 Q. Okay.

22 A. -- which you don't have to be  
23 a -- a non -- a non-DOT tank, you do not  
24 have to be licensed and I can do 'em.

25 Q. Did Christopher Foust hydrotest

1       extinguishers at your facilities?

2           A.       Yes.    Low pressure.

3           Q.       Okay.   And what do you mean when  
4       you say "low pressure"?

5           A.       Anything less than 999 pounds.

6           Q.       P.s.i.?

7           A.       Service pressure.   Yes.   Fire  
8       extinguishers are a 100 p.s.i., maximum  
9       195, 240.   Service pressure.

10          Q.       Do you, at your facility,  
11       hydrotest kitchen fire expression system  
12       agent tanks?

13          A.       No.

14          Q.       Where do you go to have that  
15       done?

16          A.       I send them out to a company  
17       down in southern Jersey.

18          Q.       Prior to the incident, did you  
19       ever at your facility do hydrotesting of  
20       Pyro-Chem tanks?

21          A.       No.

22          Q.       Prior to the incident, did you  
23       ever do hydrotesting of ProTex agent  
24       tanks?

25          A.       No.

1 Q. Didn't test any?

2 A. Didn't test any of them.

3 Q. What about filling ProTex tanks,  
4 refilling them with agent and air; did you  
5 do that at your facility?

6 A. Yes.

7 Q. And it's I think what they would  
8 call recharging?

9 A. Recharging, correct.  
10 Recharging, refilling, the same thing.

11 Q. Did Christopher Foust do  
12 recharging of ProTex tanks?

13 A. I want to say I don't recall. I  
14 mean, to be honest with you, we were only  
15 there for four months from the time I  
16 moved into my building to the time of the  
17 accident. I'm going to probably say no.

18 Q. But even at the other facility,  
19 did he do recharging ever, because didn't  
20 he -- hadn't he worked there for several  
21 years?

22 A. Yeah, he worked there for  
23 several years. On occasion, I can't  
24 recall how many he did. If we did, we did  
25 it together, but most of the time, I did

1 most of the recharging, because, like I  
2 said, that's my -- that's my forte. I got  
3 all the -- you know, I know all the ways  
4 to do it, the proper way. But I can't  
5 recall.

6 Q. He might have?

7 A. He might have, yeah.

8 Q. You don't know?

9 A. I -- like I said, I don't  
10 recall.

11 Q. Did Frank Buono ever recharge  
12 tanks --

13 A. No.

14 Q. -- any kind of tanks?

15 A. No.

16 Q. So it would be fair to say -- am  
17 I correct -- that you don't have any  
18 documents relating to training of either  
19 Christopher Foust or plaintiff regarding  
20 hydrotesting or recharging tanks, which is  
21 refilling tanks with compressed air and  
22 agent?

23 A. Yes, correct.

24 Q. No documents?

25 A. No documents.

1 Q. 7. All documents relating to  
2 the purchase or acquisition of the tank  
3 and valve that were being filled at the  
4 time of the incident?

5 A. No. Can I -- okay.

6 Q. So you don't have --

7 A. No documents.

8 Q. -- have any document?

9 A. No.

10 Q. And can you tell me why it is --

11 A. Okay.

12 Q. -- that you don't have any  
13 documents?

14 A. The tank -- the tank that's in  
15 question was made by Worthington for  
16 Pyro-Chem. It was made for Pyro-Chem  
17 distributors to be an air test tank, no  
18 labelling, no markings, no siphon tube in  
19 the valve assembly, and the tank was green  
20 on the collar and red on the bottom, as  
21 the pictures showed of what was left of  
22 it.

23 The gentleman -- in 2014, I  
24 purchased the business called Catskill  
25 Fire Systems from my best friend, Rick.

1 He was a Pyro-Chem distributor, he bought  
2 the tank from Pyro-Chem for a test tank.  
3 It probably 1998 when the tank was made.  
4 No markings on it.

5 Anyway, prior to me purchasing  
6 this in '14, I used to borrow that tank  
7 from Rick; "Hey," Rick I need a tank, I  
8 need a test tank. Can I borrow it?"

9 "Yeah, get it back to me, make  
10 you sure you fill it with air." And  
11 that's the only thing that tank ever saw  
12 was either -- was air. That's all it was.  
13 There was no -- ever no liquid, no -- it  
14 was made and sold by Pyro-Chem as a test  
15 tank.

16 Q. You said it doesn't have a  
17 siphon tube. And that -- that's the tube  
18 that goes down in and then --

19 A. That's pick up --

20 Q. -- delivers --

21 A. That'll pick up the liquid. You  
22 don't need one with air.

23 Q. Did it have a valve on the top  
24 of it --

25 A. Yes.

1 Q. -- when you purchased it?

2 A. Yes.

3 Q. Okay. And I -- I'm -- we're  
4 gonna try real hard to not talk over each  
5 other, because -- once I start to get  
6 comfortable, I tend to do it, and I think  
7 we all do that.

8 What's Rick's last name?

9 A. Dillon, D-i-l-l-o-n.

10 Q. And where was Catskill Fire  
11 Systems located?

12 A. Napanoch, New York. Ulster  
13 county.

14 Q. When did you purchase the  
15 company?

16 A. August 2014. And this tank was  
17 part of the purchase of the business with  
18 his inventory.

19 Q. If we looked at the tank  
20 immediately prior to the incident in  
21 February of 2016, was that the same valve  
22 and tank that you purchased when you  
23 purchased Catskill Fire Systems in August  
24 of 2014?

25 A. Yes.

1 Q. And there's a gauge on the tank,  
2 a pressure gauge?

3 A. Yes.

4 Q. That was on there?

5 A. Yes.

6 Q. And up until the time of the  
7 incident, was the complete valve assembly  
8 on the tank? And by that, I mean, there's  
9 a part that goes on the top that --

10 A. Schraeder. It's the connecting  
11 valve with a Schraeder valve.

12 Q. Yes.

13 A. Yes.

14 Q. Was that on there prior to  
15 filling it on that date --

16 A. I want --

17 Q. -- to your knowledge?

18 A. I want to say yes, to my  
19 knowledge.

20 Q. But wouldn't you need to have  
21 that on to be able to fill it?

22 A. No. That's why I'm -- that's  
23 why -- what it is, it's a -- it's a brass  
24 valve that screws into the head and it's  
25 got a Schraeder valve. You don't need it



1 to fill the tank, but you need it to do  
2 the test on the tank, because the  
3 connection -- that will screw on to the  
4 control head of the fire suppression  
5 system that you're doing the test, or a  
6 piece of copper tubing, but you don't need  
7 it to fill the tank.

8 Q. If --

9 A. You need it to discharge it out,  
10 but not to come in.

11 Q. That piece on top has a little  
12 valve on it?

13 A. Yes. Probably about as big  
14 as -- probably about as big as this  
15 (indicating) and it's got threads on the  
16 outside, and it's got a Schraeder valve,  
17 as if you were filling like a Schraeder  
18 valve for a tire, and that would screw on,  
19 but you could have that off or loose, but  
20 it -- you don't need it, because you're  
21 filling the tank from the side.

22 Q. If when you're filling your --  
23 the tank, you're pressing down on a valve  
24 to put the agent in, would that be the  
25 valve that you --

1           A.       You really don't have to push it  
2       down when you're pushing air in, but --

3           Q.       But would that be the only  
4       valve --

5           A.       Yes.

6           Q.       -- that would be there to press  
7       on, the one that I'm talking about that  
8       screws into the top?

9           A.       That's not really a valve.  
10       That's just a -- it's just a part of  
11       the -- part of the component of the  
12       system. You could -- like I said, you  
13       could take that -- there's an actual name  
14       for it. You could actually take that off  
15       and you could still fill the tank.

16          Q.       Okay. So it's your testimony,  
17       sitting here today, that you're not -- you  
18       don't know, one way or another, whether  
19       that portion was on the top of the tank at  
20       the time it was being filled in February  
21       of 2016?

22          A.       Yes.

23          Q.       So as to number 7, you don't  
24       have any documents regarding the purchase  
25       or acquisition of the tank and valve?

1 A. That's correct.

2 Q. Do you know if -- or had that  
3 valve ever been rebuilt by your company  
4 since it was purchased in August of 2017?

5 A. Rebuilt? No.

6 Q. And had the cylinder ever been  
7 hydrotested, to your knowledge?

8 A. No, it was never hydrotested.

9 Q. Number 8 was all labels,  
10 warnings, manuals or other documents in  
11 your possession at the time of the  
12 incident regarding the design,  
13 installation, servicing, repair, testing,  
14 filling or refilling of the tank and valve  
15 that was being filled by Mr. Foust on  
16 February 12th.

17 A. I have no documentation on that,  
18 on that particular tank. Like we said  
19 before, that was part of the purchase.

20 Q. Well, am I correct that you do  
21 have documents that relate to the  
22 Pyro-Chem system?

23 A. Yes.

24 Q. You have the Pyro-Chem --

25 A. Service manuals.

1 Q. -- service manuals, the  
2 technical manuals?

3 A. Yes.

4 Q. And am I correct that those  
5 technical manuals would contain  
6 information about recharging a tank?

7 A. Yes.

8 Q. Number 9, all notes or  
9 compilations made by you or any Oprandy's  
10 employee regarding the incident that  
11 occurred. I think I saw in here there was  
12 a document that I believe was -- it's my  
13 understanding -- was produced by OSH-- to  
14 OSHA that was an incident report.

15 A. Is that the one from OSHA? Is  
16 that the OSHA incident report?

17 Q. Well, this is incident report  
18 for February 12th. It looks like maybe  
19 something you all put together for OSHA.

20 A. Yes.

21 Q. Would that be like notes, I  
22 guess? That looks like that would be  
23 responsive to that category?

24 A. Correct.

25 Everything -- everything that led up to

1     that day or what was going on.

2           Q.     Other than this document, do you  
3     have any other documents that are notes  
4     or -- that contain information that you  
5     put together that had to do with what  
6     happened that day?

7           A.     There should be some paperwork  
8     in there from Workmen's Comp, with the  
9     incident numbers. I don't know if you  
10    need that or not. The only thing I don't  
11    have -- like I said in my statement, the  
12    only thing I don't have is I don't have  
13    the original BCI report from the State or  
14    I don't have the fire report from the  
15    local fire department.

16          Q.     DCI report?

17          A.     BCI, Bureau of Criminal  
18    Investigation. They took a statement that  
19    morning along with --

20          Q.     From you?

21          A.     -- OSHA.

22                 From me, along with OSHA. And  
23    then there's also the report from the fire  
24    department, the basic field incident  
25    report.

1 Q. But you don't have those in your  
2 possession?

3 A. No. I never got them.

4 Q. You mentioned something else  
5 that you thought was in here and I'm going  
6 to look through this real quick, let's see  
7 if I can locate it.

8 A. I know there's Workman Comp case  
9 numbers in there and everything.

10 Q. Is this the one you were talking  
11 about?

12 A. This is the -- no, this is the  
13 letter in March from the DOT, Department  
14 of Transportation. They came in because  
15 of the DOT regulated tank. So you might  
16 want to use that.

17 Q. Well, it looks like it was from  
18 you --

19 A. Yes.

20 Q. -- to the DOT?

21 A. To the DOT. That was basically  
22 after they came in. They came in like  
23 maybe four days after the accident. That  
24 was just a summary of what they were  
25 looking for and everything else.

1 Q. So this is information you  
2 provided to the Department of  
3 Transportation after the incident?

4 A. Correct.

5 Q. Okay. I think I'll put that  
6 with this just because it's authored by --

7 A. Us.

8 Q. Yes. But was there something  
9 else that you're looking for --

10 A. Unless.

11 Q. -- that had Worker's comp?

12 A. Workman's Comp? No. I mean,  
13 there was a Workman's Comp case number --  
14 two case numbers, and that should be it.

15 Q. I don't see anything else, but  
16 what I think at this point I'll mark these  
17 two documents as Defendant's  
18 Exhibits 11 --

19 A. 12.

20 Q. -- 12, which is the incident  
21 report by -- for February 12th, 2016  
22 prepared by -- who prepared this?

23 A. My other half. We did.

24 Q. Okay. And that's Pat?

25 A. Patty, yes.

1 Q. Patty.

2 And then what about the letter  
3 to the U.S. Department of Transportation?

4 A. Same thing.

5 Q. Pat prepared that?

6 A. That was compiled by us  
7 together, joint effort.

8 Q. Okay. We'll go ahead and mark  
9 that?

10 A. We did it fresh, while -- we did  
11 it, by the way, while it was still fresh  
12 in our minds.

13 Q. You've already seen these; is  
14 that right?

15 A. Yes.

16 (Defendant's Exhibit 12,  
17 February 12th, 2016 incident report and  
18 letter to U.S. DOT, marked for  
19 identification, this date.)

20 Q. You know what? I think I'm  
21 going to go ahead and mark also for  
22 Defendant's Exhibit A. These are  
23 basically pretty much what I'm going  
24 through, the exhibits, the answers for the  
25 Exhibit A. Can you identify that. I



1 think it's just going through and it's an  
2 explanation of what was produced.

3 A. Correct. This is the same thing  
4 that I have.

5 Q. Okay. And did you and Patty  
6 prepare that?

7 A. Yes, we did.

8 Q. Okay.

9 MS. STIGALL: So I'm going to go  
10 ahead and mark that as Defendant's  
11 Exhibit 13.

12 (Defendant's Exhibit 13, Answers  
13 to Exhibit A, marked for  
14 identification, this date.)

15 Q. Number 10, it looks like that  
16 just relates back to the number 2, which  
17 is...

18 A. Training.

19 Q. ... training.

20 Did you have anything at  
21 Oprandy's that listed the steps for  
22 filling tanks with compressed air at the  
23 time of this incident?

24 A. Did I?

25 Q. Yes.

1           A.       No.    Everything was from what I  
2   know of.

3           Q.       Okay.

4           A.       I mean, I -- verbally.

5           Q.       On the job?

6           A.       Verbally.

7                   MS. STIGALL: I also -- I think  
8   we talked about this employee handbook  
9   earlier as one of the items he had  
10  reviewed. I'm going to go ahead and  
11  mark that as Defendant's Exhibit 14.

12                   (Defendant's Exhibit 14,  
13  employee handbook, marked for  
14  identification, this date.)

15          Q.       Do you -- it looks like this was  
16  an employee handbook that was prepared in  
17  1998.

18          A.       Yes.

19          Q.       Is that when your business  
20  started?

21          A.       No.   No. I -- my business  
22  was -- I bought the business in 1979. In  
23  1998, my older brother came on board and  
24  helped me out and he came from that  
25  industrial end, came from the Navy and we

1 started a small handbook. It was just him  
2 and I, but, as you grow, you get  
3 employees, we just worked down the road,  
4 so every so often we would revise it, and  
5 then when we moved into our new building  
6 in '15, we revised it for the final time,  
7 which was in August, or whenever we -- we  
8 moved in, you know, late quarter --

9 Q. August --

10 A. -- of --

11 Q. It says --

12 A. -- '15.

13 Q. -- August of 2015.

14 A. '15, right. That's when we  
15 bought the building. We revised it one  
16 more time, because I was -- more  
17 employees.

18 Q. So this handbook was the one  
19 that was applicable at the time of the  
20 accident?

21 A. Yes.

22 Q. Number 11 was Christopher  
23 Foust's employment file with Oprandy's.  
24 What did you bring today that is  
25 Christopher Foust's employee file?

1           A.       It's enclosed. We brought his,  
2 I want to say, his payroll records.

3           Q.       Okay. I have --

4           A.       You have that.

5           Q.       We have a (indicating)

6           A.       Correct. Let me see that.

7                   No, this is Frank Buono's.

8           Q.       Oh, sorry. My mistake.

9           A.       What do you have?

10           MS. SCOTT: I have it.

11           MS. STIGALL: Patty, do you have  
12 that?

13           MS. SCOTT: Uh-uh.

14           MS. STIGALL: I did see one  
15 document.

16           MS. SCOTT: Here's that --  
17 here's his employee information and  
18 this was the decision from there and  
19 just his W-4, which I don't think you  
20 want.

21           MS. STIGALL: Yeah.

22           Q.       We'll go -- let me hand you --  
23 well, let's mark it first, Defendant's  
24 Exhibit 15.

25                   (Defendant's Exhibit 15,

1 Christopher Foust's employment file,  
2 marked for identification, this date.)

3 Q. Can you look at what's been  
4 marked as Defendant's Exhibit 15 and tell  
5 me if those are the documents you are  
6 producing as Christopher Foust's  
7 employment file?

8 A. Yes.

9 Q. So there's also here a document,  
10 it says -- read about why you're looking  
11 in the files and there's a letter of  
12 reprimand to Christopher Foust, and then  
13 it looks like there's a couple of letters.  
14 I'll hand these to you.

15 Are these also from Christopher  
16 Foust's employment file?

17 A. Yes.

18 Q. So those should be part of  
19 Defendant's Exhibit 15, in terms of  
20 documents that were part of his file?

21 A. Yes.

22 Q. Something just came to mind  
23 that's a little unrelated, but it was our  
24 understanding that Franklin Buono found  
25 out about the job opening through his

1       uncle, whose last name is Faust.

2           A.       But no relation.

3           Q.       Okay. That's what we wondered,  
4       if that's no relation to Christopher  
5       Foust.

6           A.       Same -- it's Chris was F-o-u-s-t  
7       and his uncle was F-a-u-s-t.

8           Q.       Okay.

9           A.       Same pronunciation; just one  
10      letter difference.

11          Q.       Thank you. Thank you. That  
12      came up the other day and I forgot to ask  
13      about it.

14                 Is there anything that was in  
15      his file that you didn't bring today? And  
16      I know I spoke a bit with Pat about  
17      Chris's medical records. I understand  
18      there might be some things that are  
19      considered confidential?

20          A.       I think that's everything.  
21      That's everything as far as our end, as  
22      far as employment.

23          Q.       And then 12 is Mr. Buono's  
24      employment file with Oprandy's.

25          A.       That's all I have, ma'am. He

1 was only employed with me for 18 days.

2 Q. So I have this employee check  
3 record. Was there anything else in his  
4 employment file?

5 THE WITNESS: Patty, what do  
6 you...

7 A. I want to say, whatever you  
8 have, this is it. Short time.

9 Q. I guess the question would be  
10 whether you filled out a job application.

11 MS. SCOTT: Oh, yeah, I have  
12 that stuff. Here's his W-9. Let me  
13 just see what else. The Finkelstein  
14 letter...

15 (Discussion held off the  
16 record.)

17 MS. STIGALL: Let's go ahead and  
18 go off the record for just one moment  
19 while she gets --

20 MS. SCOTT: That's his  
21 information that we filled out.

22 THE VIDEOGRAPHER: The time is  
23 11:05. We're going off the record.

24 MS. STIGALL: Thank you.

25 THE VIDEOGRAPHER: This will be

1 the end of Media File No. 1.

2 (Brief recess.)

3 THE VIDEOGRAPHER: We are back  
4 on the record. The time is 11:06.  
5 This is the beginning of Media File  
6 No. 2.

7 MS. STIGALL: So we'll go ahead  
8 and mark...

9 Q. These are the documents that  
10 were produced as far as Plaintiff's  
11 employment file in response to number 12;  
12 is that correct?

13 A. Yes.

14 MS. STIGALL: And that will be  
15 the next consecutive exhibit, marking  
16 exhibit 16.

17 (Defendant's Exhibit 16,  
18 Plaintiff's employment file, marked  
19 for identification, this date.)

20 Q. Number 13 is a copy of any and  
21 all insurance agreements Oprandy's had at  
22 the time of the incident that provides  
23 Oprandy's or its employees coverage for  
24 any liability related to the incident.

25 A. That would be Workman's



1 Compensation, which I have. Hartford  
2 Insurance was the carrier, and the case  
3 number was assigned to each person on the  
4 day of the accident.

5 Q. Did you bring that with you here  
6 today?

7 A. I want to say no.

8 Q. Did you have any other insurance  
9 other than Worker's Compensation covering  
10 the business for incidents that may occur  
11 on the premises or covering Oprandy's for  
12 liability separate and apart from Workers'  
13 Comp?

14 A. Yes. I have building insurance,  
15 which I have to have, and I have liability  
16 insurance.

17 Q. And did you bring either of  
18 those --

19 A. No.

20 Q. -- with you today?

21 Did you have a -- you said your  
22 Worker's Compensation was with Hartford --

23 A. Hartford Insurance.

24 Q. -- Insurance?

25 A. Yes.

1 Q. Did it have a policy limit?

2 A. Pshwew! Not that I know of.

3 Q. And then your building  
4 insurance, who is that through?

5 A. Oh, at the time, it was through  
6 Mutual -- Mutual -- Mutual Insurance, is  
7 that the company? Yes.

8 Q. And, at the time, I guess would  
9 be building insurance that you may have  
10 had relating to something happening at the  
11 building --

12 A. Correct.

13 Q. -- on February 12th, 2016?

14 A. Correct.

15 Q. And it's Mutual Insurance?

16 A. Liberty Mutual. That's what it  
17 was. It was Liberty Mutual. They were  
18 the policyholders, which I got when I  
19 bought the building.

20 Q. And do you know anything about  
21 what type of coverage that provides?

22 A. That covered -- I know what it  
23 covered. It covered -- it covered the  
24 building, it covered content or -- yeah,  
25 basically covered the building, whatever

1 the requirement was to have when I got --  
2 when I purchased the building.

3 Q. And you mentioned liability  
4 insurance?

5 A. I have to have liability  
6 insurance.

7 Q. And what --

8 A. That is --

9 Q. What do you mean you have to  
10 have it?

11 A. To be in business. It's -- it's  
12 a million dollars, a million dollar  
13 coverage, million dollars per aggregate,  
14 and my carrier is Hometown Insurance,  
15 Bohemia, New York, and the policy is  
16 written by a company called  
17 McNeil & Company out of Canajoharie, New  
18 York. I can't give you phone numbers or  
19 zip codes, but I think I did pretty good.

20 Q. You did very good.

21 Hometown Insurance, would this  
22 be the policy that would have applied at  
23 the time of the incident in February 12th,  
24 2016?

25 A. No.

1 Q. Okay. What would have applied?

2 A. Workman's Compensation only.

3 Q. No, but I'm saying, was that  
4 policy -- were all these policies in  
5 effect on that date?

6 A. Absolutely, yes.

7 Q. But you didn't bring the copies  
8 today; you don't have the copies --

9 A. No. I mean, you can -- I don't  
10 have them, no.

11 Q. 14. Any statement or deposition  
12 given by you or any Oprandy's employee  
13 regarding the incident. Who did you give  
14 statements to?

15 A. The morning of the incident, I  
16 gave a statement to the New York State  
17 Police, BCI division, as far as what  
18 happened. I gave it to 'em, it was  
19 a quite lengthy statement, because it had  
20 to be redone a couple of times because of  
21 the language involved, and then I also,  
22 right after that, was the Chris Reed (ph.)  
23 from the New York State Department of  
24 Labor OSHA from Albany came down, I gave  
25 him a statement, and both statements

1       coincided with each other.

2           Q.       I'm -- I just have to ask you.  
3       You said something it had to be redone  
4       because of the language of the statement.  
5       I wasn't sure --

6           A.       Well, if you don't know the  
7       industry, and you're an outsider, it can  
8       be difficult to understand. If you're not  
9       in the fire service and you're Joe Fireman  
10      or just a plain -- you're not going to  
11      know what a cascade system is. I had to  
12      explain the whole operation of a cascade  
13      system and compressor and everything else,  
14      and, you know -- so there was the layman's  
15      operation, but, to me, is -- it got very  
16      intricated sic) where you had to actually  
17      explain it and, you know, he read back and  
18      looked at it and he said, no, we gotta do  
19      this, just to make sure it was right, but  
20      that's what took so long for him to do it,  
21      and the same with the OSHA guy. I mean,  
22      unless you know the language or the  
23      industry, it's all new...

24           Q.       So, to kind of put that in a  
25      nutshell, because of the technical

1 nature --

2 A. Correct.

3 Q. -- of the equipment --

4 A. Correct. And plus being I've  
5 been doing it so long.

6 Q. I have some other documents  
7 here. A lot of them are from the  
8 different attorneys involved, requesting  
9 information, requesting the inspection,  
10 and then both the subpoenas, and then --  
11 I'm not sure what this (indicating) is.  
12 Is this just a copy of something?

13 A. Let's me see that. It could  
14 be a copy of a fax maybe.

15 MS. SCOTT: It's a fax.

16 Q. Was it --

17 A. This was a fax sent on April  
18 24th. I don't even know where it went to.

19 MS. SCOTT: Disregard it.

20 A. Yes.

21 Q. Yeah, I don't have any idea  
22 what --

23 A. There's no number or nothing.

24 Q. There's no information. What I  
25 think I'll do is, once we take a break,

1 I'm just going to -- well, right now, I'll  
2 mark the rest of this that you've produced  
3 as the next consecutive exhibit, and, at  
4 some point, when we have a break, we'll  
5 kind of go through it and decide if we  
6 need to ask questions about it.

7 (Defendant's Exhibit 17, an  
8 Oprandy's January 24th, 2018 letter to  
9 OSHA, and various other letters,  
10 marked for identification, this date.)

11 Q. So this, the next exhibit, is  
12 Exhibit 17. The first page has Oprandy's  
13 at the top and it's January 24th, 2018 and  
14 it's a letter to OSHA from you about when  
15 we were talking about trying to get  
16 possession of the cylinder --

17 A. Yes.

18 Q. -- and to look at the cylinder.

19 And then there are a number of  
20 letters after that, we'll just mark these  
21 all as Defendant's Exhibit 17.

22 A. Okay.

23 MS. STIGALL: When we reach a  
24 break, I'll get something maybe to put  
25 on there because we won't able to

1           staple those together.

2                   Shelley just got me one.

3           Q.       How long -- and I know you  
4       stated it -- let's just start with this:  
5       How long had Franklin Buono worked at  
6       Oprandy's prior to this incident?

7           A.       18 days.

8           Q.       And during the 18 days that he  
9       worked at Oprandy's, what were his job  
10      duties?

11          A.       He was working under Chris,  
12      through me also, as a -- to work in the  
13      shop, getting to know the familiarization  
14      of fire extinguishers, types, sizes,  
15      classifications, and the procedures for  
16      low-pressure testing and/or recharging.

17          Q.       Did anyone other than Chris  
18      train Frank on these procedures?

19          A.       Chris did most of the training,  
20      but I was basically -- I was there, you  
21      know, on occasion, overseeing, as the  
22      owner.

23          Q.       What -- so let's talk about what  
24      training you did, or were you just seeing  
25      what he was doing, or did -- I just want



1 to get a clear record. Did you ever do  
2 training of Frank on the work he was  
3 there -- he was doing there at Oprandy's?

4 A. No.

5 Q. Chris did that training?

6 A. Yes.

7 Q. And what did you see Chris do,  
8 in terms of training of Franklin Buono?

9 A. Well, basically, everything I  
10 just said before, as far as, you know, the  
11 procedure to -- you know, checking dates,  
12 checking pressures, putting -- making sure  
13 you put the right chemical in the right  
14 cylinder, you know, make sure the fire  
15 extinguisher come in and they have to  
16 be -- if -- so they could be tested,  
17 inspected, and the labeling of 'em, the  
18 packaging of 'em, send them out the door.  
19 There's a whole -- the whole ball of -- it  
20 goes into one big ball of wax, that the  
21 last thing you do, you tag it out and it  
22 goes out to the customer, and then there's  
23 the paperwork process.

24 Q. Would this be kind of what we  
25 think about when we say "on-the-job

1 training"?

2 A. Yes, ma'am.

3 Q. Somebody who's done the job  
4 before is showing the next guy how to do  
5 it?

6 A. Yes.

7 Q. Do you know, were there any  
8 documents -- steps 1, 2, 3, 4, 5, 6, 7 --  
9 that Chris used when he was training Frank  
10 about what to do?

11 A. I would say Chris had his -- how  
12 do I want to put this? His technique on  
13 how to do it the right way. I mean...

14 Q. What -- was there, though, any  
15 document that was on the wall or that you  
16 can produce here today that said, here's  
17 what you do: 1, 2, 3, 4, 5, went through  
18 the steps?

19 A. No.

20 Q. So the training that Chris gave  
21 to Frank was a verbal here's what you do  
22 first, here's what you do --

23 A. Correct.

24 Q. -- this is what you do, because  
25 of that, that type of thing?

1           A.       Yes.   Hands-on.

2           Q.       In the time that Frank was at  
3   Oprandy's, did he do any hydrotesting of  
4   fire extinguishers?

5           A.       No.

6           Q.       Would he inspect fire  
7   extinguishers?

8           A.       Yes.

9           Q.       Would he take the fire  
10   extinguishers apart and basically rebuild  
11   them?

12          A.       Yes.   Rework 'em, recharge 'em,  
13   yes.

14          Q.       So, Frank's job, it sounds like,  
15   it is solely related to fire  
16   extinguishers?

17          A.       Yes.

18          Q.       He gets 'em in, he'll inspect  
19   'em; if something needs to be rebuilt, he  
20   does that; if it -- if they need new agent  
21   in 'em, he'll take out the agent and put  
22   in new agent and -- what do you --

23          A.       Recharge.

24          Q.       Recharge.

25                   What kind of air do you use on

1 the fire extinguishers?

2 A. Nitrogen.

3 Q. We had some exhibits we used  
4 during the deposition Monday that show  
5 photographs of various locations, filling  
6 stations, whatever you want to call them,  
7 at Oprandy's. When Frank would recharge  
8 fire extinguishers, was there a particular  
9 filling station or a particular device  
10 he'd use to refill the fire extinguisher  
11 with nitrogen?

12 A. Well, it would be a tank with a  
13 regulator, with a hose, with a -- an  
14 adaptor that we'd fill into the fire  
15 extinguisher and pressurize it.

16 Q. But what I'm -- I'm handing you  
17 what was previously marked Defendant's  
18 Exhibit 8, Defendant's Exhibit 9, and  
19 Defendant's Exhibit 4. They're  
20 photographs. Could you look at that,  
21 those exhibits, and show me where or what  
22 device would be used to refill fire  
23 extinguishers with nitrogen?

24 A. Well, this (indicating) has  
25 nothing to do with it, because this is the

1 room where the explosion was.

2 Q. So, when you say "this has  
3 nothing to do with it" --

4 A. That's the whole --

5 Q. -- you're talking about the  
6 photographs in Defendant's Exhibit 4?

7 A. That's a whole -- that's a whole  
8 different room.

9 Q. Okay.

10 A. That's not even involved.

11 Q. Okay. And I would assume then  
12 that you mean that he did not use the  
13 Poseidon system to refill fire  
14 extinguishers with nitrogen?

15 A. That's correct.

16 Q. So let's look at the other two  
17 exhibits.

18 A. Number 8, this is a low-pressure  
19 test machine for filling low-pressure  
20 extinguishers. This, and the one happened  
21 on the bench, and the two on the floor,  
22 happen to be water can extinguishers,  
23 which get low-pressure tested to 200  
24 pounds. That's test -- that's a -- that's  
25 a low-pressure test machine.

1 Q. What's done at that location?

2 A. Testing the -- you're testing,  
3 so you're putting -- you're testing the  
4 integrity of the shell under pressure with  
5 water, hydrotesting.

6 Q. So it's your testimony, as I  
7 understand it, that hydrotesting was done  
8 at the station that's shown on Defendant's  
9 Exhibit 8?

10 A. Yes.

11 Q. Did -- to your knowledge, did  
12 Mr. Buono ever fill --

13 A. No.

14 Q. -- extinguishers at that  
15 location?

16 A. No. This is a hydrotest  
17 procedure. That's why. It's two  
18 different -- where I hydrotest and where I  
19 fill are two separate parts of the  
20 building.

21 Q. And it's your testimony that he  
22 never did hydro --

23 A. To my --

24 Q. -- test?

25 A. -- recall, no.

1 Q. Thank you.

2 MR. FROMSON: Just for ease of  
3 reference, do you mind if he shows  
4 that exhibit to the camera for five  
5 seconds, if that?

6 THE WITNESS: This is --

7 MR. FROMSON: You don't have to  
8 answer any question. Just hold it  
9 steady for a moment. And that is  
10 Exhibit 8?

11 MS. STIGALL: Yes.

12 MR. FROMSON: Great.

13 THE VIDEOGRAPHER: Got it.

14 MR. FROMSON: Thank you. And  
15 you're about to show a different one?

16 THE WITNESS: Correct.

17 MS. STIGALL: What exhibit is  
18 that, sir?

19 THE WITNESS: This is number 9.

20 MR. FROMSON: Just hold it  
21 steady for at least five seconds.

22 Thank you.

23 By MS. STIGALL:

24 Q. What goes on at the station  
25 that's Exhibit No. 9?

1           A.       This is where -- to the -- you  
2       can't see it in this picture, but, to the  
3       right of that workbench is our -- is what  
4       they c-- a hopper system which holds the  
5       powder, which it works under air from my  
6       shop compressor that you -- works off a  
7       vacuum system that you fill the fire  
8       extinguishers, and then this bench here  
9       (indicating) is the workbench that -- and  
10      underneath there are all the drawers with  
11      all the parts and valve stems we've got to  
12      replace, and this (indicating) is where  
13      all the work is done, it's rebuilt, and  
14      just to the left of it here (indicating)  
15      are my nitrogen tanks, and that's how you  
16      recharge it. And you have to recharge it  
17      a particular way, and there's adaptors  
18      that go into the valve head to hook your  
19      nitrogen to, because every fire  
20      extinguisher has a different valve  
21      adaptor, has a different hookup adaptor.

22           Q.       So where do you get the nitrogen  
23      bottles?

24           A.       I buy -- I have a gas company.  
25      They fill 'em. You can't fill nitrogen.



1 You have to --

2 Q. Do you -

3 A. I send them out.

4 Q. -- know what p.s.i. those  
5 bottles are filled to?

6 A. Uh... dah, dah, dah ... either  
7 1800 or 2015 pounds p.s.i. or higher.  
8 Yeah, at least 1800, 2000 or higher,  
9 2-- p.s.i.

10 Q. Did Franklin Buono use this  
11 station when he was doing work that you  
12 described on fire extinguishers?

13 A. Yes.

14 Q. Which of these stations were  
15 used to recharge agent tanks for fire  
16 suppression systems?

17 A. Probably I would fill it at the  
18 first station, Exhibit 8, because that's  
19 got a sink, if I ever had to wash the tank  
20 down or anything like that, plus I like to  
21 keep the wet away from the dry, because  
22 it's a wet liquid, and then I would  
23 rebuild them on the work bench and  
24 pressurize them here (indicating), because  
25 that's where all my parts are and my valve

1 assemblies and my adaptors for recharging  
2 it.

3 Q. Let's go through the steps and  
4 where you would be at the certain times.  
5 Tell me the steps you would go through to  
6 recharge a Pyro-Chem tank, like which  
7 station and what you would do.

8 A. Well, first -- could I have that  
9 one back?

10 Q. Sure.

11 A. First of all, if you look, this  
12 is a pneumatic belt vice they call it. In  
13 order to take the head off the cylinder  
14 you have to put it in took him so long to  
15 do it, pneumatic belt vice to hold it,  
16 because, otherwise, you won't get the  
17 valve head off. You take the valve head  
18 off, you'd either -- you dump out the  
19 remaining liquid, put in fresh charge of  
20 liquid -- usually I like to do that over  
21 the sink, because, like I said, it's a wet  
22 agent, okay? -- wash anything out that  
23 has to be washed, pour my liquid back in  
24 the tank, put it back in the vice, because  
25 you have to now put the belt around it to

1     tighten it, otherwise the tank would  
2     leak -- the valve would leak, and then I'd  
3     take it or to the other side.

4             I would rebuild the valve  
5     either -- either here or at my work bench,  
6     but the last thing before it goes to get  
7     pressurized, it would come off the belt  
8     vice, go over to the workbench, which is  
9     here (indicating), and this is where I  
10    would fill it with the nitrogen, at this  
11    valve.

12            MR. FROMSON: As a courtesy, can  
13    you hold up the other exhibit. And  
14    what exhibit are you holding up now?

15            THE WITNESS: This is number --  
16    this is Exhibit No. 8.

17            MR. FROMSON: Can you just hold  
18    it steady --

19            THE WITNESS: Sure.

20            MR. FROMSON: -- for just a few  
21    seconds.

22    By MS. STIGALL:

23            Q.     So that's where you would do a  
24    lot of your initial work?

25            A.     That's where you -- you have to

1 devalve it, pour liquid, and re-- revalve  
2 it after you've rebuilt the head, and then  
3 go over to here and --

4 MR. FROMSON: And that exhibit  
5 is what?

6 THE WITNESS: This is 9.

7 MR. FROMSON: Thank you.

8 A. And this will be 9. This is  
9 where you would actually pressurize it,  
10 because the nitrogen lines are on this  
11 side (indicating) of the wall.

12 Q. Okay. And describe to me how  
13 you hook it up to pressurize it.

14 A. On the valve head of all fire  
15 suppression systems, just like fire  
16 extinguishers, there is a port. It's  
17 usually it's a half-inch port and there's  
18 a -- you should come out with a piece of  
19 pipe, a paw, a half-inch piece of pipe,  
20 like a -- I call it a black nipple -- and  
21 you'd hook on a recharge adaptor, and this  
22 here -- it doesn't show it here -- on the  
23 end of the nitrogen tank, towards the end,  
24 is a quick connect that you'd quick  
25 connect, and in between the quick connect

1 and the regulator is a ball valve.

2 So you turn the tank on, set  
3 your pressure. One tank was -- it's a  
4 two-stage regulator. One will tell you  
5 pressure going into the tank, one will  
6 tell you what your pressure is of the  
7 tank. So, if you -- the -- whether it's  
8 1800 or -- whatever your maximum --  
9 whatever the pressure is in the tank at  
10 the time -- and you would turn the valve  
11 on and you'd watch the gauge go up on  
12 the -- on the cylinder. When it --

13 Q. So --

14 A. -- hits 12:00, you're done.

15 Q. So I'm going to hand you what's  
16 been marked as Defendant 's Exhibit 6, and  
17 I understand this is a test cylinder, but  
18 I also understand that the valve is much  
19 the same.

20 A. Yes.

21 Q. When you say you look at the  
22 gauge to see that it's filled up, is it  
23 the gauge that's on the agent tank?

24 A. Yes.

25 Q. So, looking at Defendant's

1 Exhibit 6, you can't see that gauge  
2 straight on; you're kind of seeing it from  
3 the side; right?

4 A. Correct.

5 Q. That's the gauge you're talking  
6 about that you look at?

7 A. Yes.

8 Q. And do you look to see if it  
9 goes up to the green?

10 A. Straight up at 12:00. That's a  
11 full -- that's a full charge.

12 Q. And you would do that if you  
13 were filling a Pyro-Chem tank?

14 A. Any -- any agent -- anything  
15 that has a gauge on it, you have to watch  
16 that gauge go up; otherwise, something's  
17 wrong.

18 Q. Okay. So the equipment that  
19 you're using is, you're using the tanks,  
20 you're using some connection devices, and  
21 above them is going to have a handle on it  
22 that you can turn off and on the flow  
23 of --

24 A. Yes.

25 Q. -- nitrogen?

1           A.       Yes.

2           Q.       Is -- I'm handing you what's  
3       been marked's Defendant's Exhibit 7 and  
4       there's an item called a quarter-turn ball  
5       assembly. If you could look at that, it's  
6       the middle or the bottom picture. Is  
7       that -- I'm not -- I don't know if that's  
8       the same one?

9           A.       That's the same one. It's the  
10       exact same setup. This is what was used  
11       off the cascade system, which is the same  
12       setup that I have on the nitrogen  
13       system --

14                   MR. FROMSON: Hold it up.

15          A.       -- because you have to have --  
16       you have to have some way of shutting your  
17       air off, besides going back to the tank.  
18       So it -- an in-line ball valve. You crack  
19       it open for a little air, or you can go  
20       all the way, or -- and as you -- as the  
21       gauge is -- you reg-- this -- this  
22       basically -- basically regulates the  
23       amount of flow going into the tank, at  
24       your discretion.

25                   MR. FROMSON: What exhibit is

1           that?

2                   THE WITNESS:    7.

3                   MR. FROMSON:   Thank you.

4           Q.       And the picture that's above  
5   that is another fitting. Which side does  
6   it go -- does that go into the tank, or  
7   can you tell?

8           A.       Oh, boy. I got to-- it's been a  
9   while.

10          Q.       I guess I should ask first:  
11   Would that be a fitting that's also used  
12   both when you're filling agent tanks and  
13   using the cascade --

14          A.       Yes.

15          Q.       -- system?

16          A.       Yes. This is -- okay, this  
17   (indicating) part here, like I said  
18   before, coming out of the tank, is a  
19   half-inch port. This is the half-inch  
20   nipple (indicating). So your flow of air  
21   is going this way (indicating), because  
22   here's your tank (indicating), here's your  
23   valve (indicating), here's your nipple  
24   (indicating), here's your adaptor  
25   (indicating), and then what we did was



1     this (indicating) went into here  
2     (indicating) as an extra adaptor, because  
3     this (indicating) has the ball valve on it  
4     for shutoff.

5           Q.     Okay. So they basically -- the  
6     picture that's on the front, that fitting  
7     would go on first and -- and --

8           A.     And you'd hook into either here  
9     (indicating), or you could hook this  
10    (indicating) into here (indicating),  
11    because you notice that's the male and  
12    that's the female. So you can quickly --  
13    you can actually put an extension on it.

14          Q.     But the larger side of the top  
15    fitting would be the one that would screw  
16    into the tank?

17          A.     Correct.

18          Q.     And am I correct that the  
19    smaller side of the top fitting would  
20    quick connect --

21          A.     Onto here (indicating).

22          Q.     -- in -- and hold up -- can you  
23    just --

24          A.     Yup.

25          Q.     -- hold that up and point to

1 where that --

2 A. This (indicating) -- this would  
3 go to the tank, this (indicating) would go  
4 into here (indicating), because this  
5 (indicating) is the male and that's the  
6 female (indicating), and this (indicating)  
7 would go hook into the line.

8 Q. Okay. So, essentially, you've  
9 got your tank with your gauge on it;  
10 you've got these two fittings leading to  
11 the air hose --

12 A. (Nodding)

13 Q. -- and then what's next?

14 A. Your tank, your connection, your  
15 line, and then you have your fill site,  
16 which is either going to be nitrogen -- or  
17 this happens to be the compressed tanks.

18 Q. When you were doing filling of  
19 the --

20 A. Fire extinguishers?

21 Q. Right now we're talking about  
22 recharging.

23 A. Correct.

24 Q. When you're doing recharging,  
25 was there a regulator in there somewhere?

1           A.       Off the tank, two-stage  
2 regulator. If you look at it real -- like  
3 real close, if you follow that tank,  
4 there's a two-stage regulator on there.

5           Q.       The two-stage regulator, when  
6 you say it's off the tank, it's off the  
7 nitrogen tank?

8           A.       Correct.

9           Q.       Okay. And then you would look  
10 at the gauge on the agent tank, and when  
11 that would get to the green, you'd know to  
12 turn the valve --

13          A.       (Indicating)

14          Q.       -- and stop the air?

15          A.       Right.

16          Q.       The regulator that was used to  
17 recharge tanks that was with that nitrogen  
18 tank, is that is the same type of  
19 regulator that's used with the Poseidon  
20 system?

21          A.       Yes. It was a -- it was a  
22 two-stage regulator.

23          Q.       But I guess the Poseidon system  
24 was purchased with the regulator on it --

25          A.       Correct.

1 Q. -- is that correct?

2 A. Correct.

3 Q. Was this a regulator that just  
4 came with the nitrogen tank or --

5 A. It's a whole -- no. It's a --  
6 it's a normal two-stage regulator that you  
7 can use in the industry.

8 Q. But it may be a different  
9 manufacturer or something?

10 A. Exactly. Exactly. Yes.

11 Q. Well, it sounds like it's a  
12 similar setup --

13 A. Same concept.

14 Q. -- whether -- whether you're  
15 doing a compressed air tank or whether  
16 you're recharging a cylinder --

17 A. Correct. Yes.

18 Q. -- an agent tank?

19 A. An agent tank, yes.

20 Q. Thank you.

21 A. Okay.

22 Q. It's -- I understand it's --

23 A. ... the clarification, yeah,  
24 let's you...

25 MS. STIGALL: You're doing very

1 well, but I think I need a break. So  
2 can we take -- would ten minutes be  
3 okay?

4 THE WITNESS: Fine with me.

5 THE VIDEOGRAPHER: Okay. We're  
6 going off the record. The time is  
7 11:35.

8 (Brief recess.)

9 THE VIDEOGRAPHER: We are back  
10 on the record. The time is 11:54.

11 MS. STIGALL: While we were  
12 taking a break, Patty Scott provided  
13 me with some pages that relate to  
14 various contacts that were made after  
15 the incident, and I have seven pages  
16 that we will mark as Defendant's  
17 Exhibit 18.

18 (Defendant's Exhibit 18, seven  
19 pages that relate to various contacts  
20 and background information made after  
21 the incident, marked for  
22 identification, this date.)

23 BY MS. STIGALL:

24 Q. And can you identify those as  
25 pages put together relating to contacts

1 and background information that was  
2 collected after the incident by your wife  
3 or you?

4 A. That's everything, yes.

5 Q. Thank you.

6 Let's talk a little bit about,  
7 again, about filling -- well, we were  
8 talking about recharging fire  
9 extinguishers. Now let's switch gears a  
10 little bit and just talk about  
11 refilling -- I'm sorry, refilling agent  
12 tanks is what we talked about before;  
13 correct?

14 A. (Nodding)

15 Q. Yes?

16 A. Yes.

17 Q. I just want to switch gears a  
18 little bit and talk about the process of  
19 refilling a fire extinguisher with agent,  
20 and would that be nitrogen also?

21 A. Yes.

22 Q. So it's my understanding, from  
23 what we talked about before, that that's  
24 what was done at the station, and we held  
25 this up for the camera before that's on

1 Defendant's Exhibit 9.

2 A. Yes.

3 Q. Okay. And can you, in the same  
4 way that when we talked about the  
5 recharging of agent tanks, can you tell me  
6 what were the connections made along the  
7 way from the compressed gas cylinder until  
8 we're going into the extinguisher tank.

9 A. Coming off the tank, you have a  
10 two-stage regulator; off the two-stage  
11 regulator, you have a line of -- whatever  
12 length -- to the work bench; you'd have a  
13 ball valve which would be a control valve  
14 or ball valve; and after the ball valve  
15 would be a -- a quick connect which would  
16 be a female connection, which, in turn,  
17 would hook into the male connection of  
18 the -- that will be threaded in on a male  
19 thread of it, which will go into the fire  
20 extinguisher valve head -- and there's  
21 different connections, because every fire  
22 extinguisher has a different valve  
23 assembly. So you can have -- probably  
24 have at least seven or eight different  
25 connections, because each fire

1 extinguisher has their own fitting.

2 Q. Did you train Christopher Foust  
3 on the filling of fire extinguishers?

4 A. Yes, I did.

5 Q. And as part of your training  
6 with Christopher Foust, did you speak with  
7 him about the dangers that are inherent in  
8 filling containers with compressed gas?

9 A. Yes, I did.

10 Q. What did you tell him?

11 A. Basically, that it's a -- the  
12 fire -- the tank on the wall is a  
13 pressurized vessel, high pressure,  
14 nitrogen; you have to set your gauge at a  
15 certain pressure in order -- if -- if  
16 you're pressurizing the fire extinguisher  
17 to 195 pounds, you can't try to fill it  
18 when you only put 100 pounds in. You have  
19 to have at least 195 pounds or greater.  
20 25 pounds -- the standard is, if the 195  
21 pounds pressure, which is 99 percent of  
22 the fire extinguishers on the dry  
23 chemical, once you pressurize it, 25 per--  
24 25 p.s.i. greater is the maximum. So if  
25 you have 195 pounds going in to the tank,



1     you need 25 to pounds more, which is 220?  
2     That's the maximum. I explained that to  
3     him, it's a pressurized vessel, that  
4     there's a procedure -- you have the ball  
5     valve, you got the handle, and the whole  
6     nine yards. I explained the whole thing;  
7     that if the gauge doesn't go up when you  
8     put 200 pounds of nitrogen, stop what  
9     you're doing. It's gonna max out at the  
10    maximum anyway, so the chance of anything  
11    happening isn't -- is slim to none, but if  
12    something -- if the gauge doesn't go up,  
13    something's wrong; either you didn't -- it  
14    didn't bump, powder's caked, or you got a  
15    bad gauge, start all over again.

16           Q.     So you said it's going to stop  
17    at the maximum. Do you mean the maximum  
18    that the regulator is set?

19           A.     Maximum set the regulator, yes.

20           Q.     Did you train Christopher Foust  
21    on setting the regulator based upon  
22    looking at the p.s.i. of the fire  
23    extinguisher?

24           A.     Yes.

25           Q.     So would I be correct in knowing

1 in -- in -- would you then say that  
2 Christopher Foust knew he needed to look  
3 at what pressure the fire extinguisher was  
4 rated at?

5 A. Yes.

6 Q. And you taught him to do that?

7 A. Yes, I did.

8 Q. And did you discuss with  
9 Mr. Foust if a cylinder is  
10 overpressurized, something -- somebody  
11 could be get hurt?

12 A. Yes.

13 Q. Tell me what you told him.

14 A. Basically, if it's  
15 overpressurized, there's -- it's a  
16 limited -- there's a limitation that if  
17 you -- you can point so much air into --  
18 you can only put so much air into a  
19 cylinder before something's going to  
20 happen. If it goes below -- if you're  
21 going over 12:00, over -- over 12:00,  
22 which is what the gauge is set at, and  
23 nothing's happening, or something  
24 shouldn't happen, stop what you're doing.

25 Q. And did you explain to him why?

1           A.       Oh, yeah. I explained to him  
2       that the tank can only hold so much  
3       pressure.

4           Q.       And did you explain to him the  
5       tank could explode?

6           A.       Probably not. But I think he  
7       was smart enough to realize that, because  
8       just -- he was very crafty and very handy  
9       and very mechanically inclined, so -- he  
10      worked for a body shop part-time and he  
11      knew all about air pressures and tires and  
12      everything else. You know, when you --  
13      when something's going to -- if -- you  
14      know, everything has its limits and he was  
15      very knowledgeable about that.

16          Q.       Do you feel like you know -- you  
17      knew Christopher Foust well?

18          A.       After three years, yes.

19          Q.       And based upon your knowledge  
20      working around him in a shop for the three  
21      years, where there are pressurized tanks,  
22      is it your understanding that he was  
23      the -- he would know that compressed gases  
24      can be dangerous?

25          A.       Yes. I was comfortable with

1     that.

2           Q.     And he would know that he needs  
3     to check what are the pressures on a  
4     cylinder that's marked with a pressure?

5           A.     Yes.

6           Q.     And would you expect that he, in  
7     training Mr. Buono, that he would relay  
8     that information?

9           A.     If at the time to be trained,  
10    yes.

11          Q.     So the pressure regulator that  
12    was used at the nitrogen tank, that would  
13    be adjusted depending upon the pressure in  
14    the fire extinguisher --

15          A.     Correct.

16          Q.     -- is that correct?

17          A.     When you had said it -- you had  
18    said it in the morning, and  
19    unless you're -- you would -- you got 12  
20    fire extinguishers, you don't have to set  
21    the pressure 12 times. Once you put one  
22    at 195 pounds, you set it for 25 pounds  
23    over, you set it and forget it. At the  
24    end of the day, you'd back off your  
25    regulator and like you shut -- when you

1 shut tank off, you always backed off your  
2 of regulator to zero, because you don't  
3 want pressure on the line. That was the  
4 procedure also. But once you set that  
5 regulator, unless you get a different tank  
6 pressure, which wouldn't happen, or, if  
7 you did, you would adjust it accordingly.

8 Q. When you say "set the  
9 regulators", it's basically to put it at  
10 the --

11 A. It's a --

12 Q. -- at the --

13 A. It was a two-stage regulator, in  
14 the center was a -- it's a diaphragm. And  
15 you would counterclockwise to decrease it,  
16 counterclockwise (sic) to increase it.

17 Q. What about the regulator at the  
18 Poseidon system? Was that adjusted?

19 A. Yes.

20 Q. How was that adjusted?

21 A. Again, it's a two-stage  
22 regulator, one tank -- one -- one port  
23 coming off the last tank, or the cascade  
24 system tank, and the other line going to  
25 the fill, and it was a -- that was a

1 different type of a regulator, where it  
2 was a dial, so you would -- again,  
3 counterclockwise to decrease,  
4 counterclockwise -- or clockwise to  
5 increase, and you would set it the down to  
6 zero and set it as you would go.

7 Q. Just like with the  
8 extinguishers, was it your understanding,  
9 based upon your training of Christopher  
10 and our working around him for three  
11 years, that he was aware of the dangers  
12 inherent in handling compressed gas  
13 cylinders?

14 A. Yes.

15 Q. Including the test cylinder at  
16 the issue?

17 A. Yes.

18 Q. And it would be your  
19 understanding, based upon your training  
20 and working with him, that he would have  
21 been aware, by looking at that cylinder,  
22 what the appropriate fill pressure was?

23 A. Yes.

24 Q. Because you taught him to look  
25 for that?

1 A. Correct. Yes, I did.

2 Q. It's stamped on the tank, isn't  
3 it, the 225?

4 A. No. The 225 -- uh... that tank  
5 was only 175. It was on the gauge.

6 Q. So 175 --

7 A. 175 was on --

8 Q. -- was on the gauge?

9 A. -- the gauge, yes. The DOT --  
10 the DWDLTBW (ph.)(sic) 225 was the DOT --  
11 the DOT number.

12 Q. Right.

13 A. Correct.

14 Q. The little green arrow --  
15 area on the tank --

16 A. 12:00.

17 Q. -- said "Fill to 175"?

18 A. Correct.

19 Q. That's where you're supposed to  
20 put it?

21 A. Yes, ma'am.

22 Q. In the time when Franklin Buono  
23 was working at Oprandy's prior to the  
24 incident, was he engaged in an argument  
25 with Christopher Foust?

1           A.       I don't know. From what I'm  
2       hearing, there was some arguments prior to  
3       that morning. I was not there to witness  
4       it, but, from hearsay, yes.

5           Q.       Okay. And I understand you  
6       didn't hear the arguments, but I'd like to  
7       know is who heard the arguments and what  
8       they heard.

9           A.       I had a young girl who worked  
10      for me, told my wife Patty that on  
11      occasion she would hear Frank Buono and  
12      Chris arguing about something. I don't  
13      know what the particular details were, but  
14      I do know that, when Patty would come in  
15      at 10:00, there would be no more arguing,  
16      so... let's read between the lines or  
17      whatever, but I wasn't there to witness  
18      anything, but that's what I'm hearing.

19          Q.       Who -- can you give me her name,  
20      the young girl?

21          A.       Kimberly Tremberger,  
22      T-r-e-m-b-e-r-g-e-r.

23          Q.       Where does she live?

24          A.       Pine Bush, New York. She come  
25      in -- she worked a couple of hours a day.



1 She -- she was working a couple of hours a  
2 day. Her brother works -- worked --  
3 worked -- works and still does work for  
4 me. Kimberly doesn't -- doesn't work for  
5 me anymore. But she was -- they actually  
6 walked in right after -- yeah, they walked  
7 in on the accident. Just -- yeah, I think  
8 when they pulled into the parking lot was  
9 when all -- everything else happened,  
10 so...

11 Q. I thought you said --

12 A. But she wasn't -- it was 9:00 in  
13 the morning. They didn't come in until  
14 like probably 9:00 -- yeah, 9:00, 9:30  
15 that morning, yeah. She worked part-time.  
16 So -- but she walked in on the accident.  
17 But, prior to accident, she was there  
18 whatever days of the week we had her  
19 scheduled for.

20 Q. So you're saying she wasn't  
21 there on the morning of the accident  
22 before it happened, but on prior mornings  
23 she --

24 A. She was there.

25 Q. -- heard this arguing?

1           A.       Yeah, she  
2       will -- because -- yeah, like they will  
3       start at 8:30. She would come in like a  
4       quarter of nine, ten of, with her brother,  
5       and between that 9:00 and 10:00 window,  
6       she would hear 'em arguing.

7           Q.       So maybe her brother heard them  
8       arguing also?

9           A.       Probably not, because, when he  
10       would come in, he would go out with me on  
11       the road, so I would say no.

12          Q.       What's his name, just --

13          A.       William.

14          Q.       William Tremberger?

15          A.       Tremberger, yeah.

16          Q.       T-r-e-m-b-e-r-g-e-r?

17          A.       ... g-e-r, yes.

18          Q.       Did you ever hear from any  
19       source what they were arguing about?

20          A.       No.

21          Q.       And I'm going to ask you --  
22       because I heard this -- did you ever hear  
23       that there was any type of argument or  
24       disagreement between Frank Buono  
25       Christopher Foust concerning drugs?

1           A.       I -- I never heard anything  
2       about it. I don't know what Kimberly had  
3       to say about it. She can maybe tell you.  
4       I don't know, but I -- I personally never  
5       heard anything about it.

6           Q.       But you never -- I'm not the  
7       saying you hearing it, but did you hear  
8       from any other source that that was what  
9       the argument was about?

10          A.       I'm going to say yes.

11          Q.       And who did you hear that from?

12          A.       I didn't hear it from employees,  
13       but I heard it from outside sources that  
14       something was -- something was going on,  
15       but, to try to pinpoint it to my place of  
16       business, I mean, I couldn't. But you  
17       know what they call rumors?

18          Q.       Well, what were the outside  
19       sources? And I understand --

20          A.       People who knew Chris.

21          Q.       Well --

22          A.       Chris came from a big town, his  
23       father was a cop, worked in a body shop.  
24       You hear all this after the fact.

25          Q.       What's his father's name?

1 A. Randy.

2 Q. Foust?

3 A. Yes.

4 Q. And he's a --

5 A. Retired --

6 Q. -- police --

7 A. Retired police officer in the  
8 Town of Warwick. You hear all the rumors  
9 after the fact, but put one and two  
10 together...

11 Q. Christopher Foust passed away?

12 A. Correct.

13 Q. Do you know what he died from?

14 A. Again, drugs. That's what the  
15 word on the street is, seven month --

16 Q. Illegal drugs?

17 A. Excuse me?

18 Q. Illegal drugs?

19 A. I'm going to say yes. Seven  
20 months after the accident, September --

21 MS. SCOTT: 20.

22 A. Right around the 20th.

23 Q. Of 2016?

24 A. Correct.

25 Q. Were you on good terms with

1 Chris after the accident?

2 A. Absolutely. Patty and I went  
3 down and saw him at the hospital, he took  
4 us right on his wheelchair, showed us a --  
5 you know, he was in very good spirits, I  
6 actually cried on the way out the door,  
7 and then we picked up him up probably --  
8 that -- when he got released from the  
9 hospital -- picked him up, went out to one  
10 of my restaurant accounts and took him out  
11 to dinner. Rode right next to me in the  
12 front seat. Oh, yeah. We had no -- we  
13 did -- and -- and -- and he -- first thing  
14 he said to -- matter of fact, his father,  
15 the night of the accident, called me,  
16 after all the dust settled, and actually  
17 said to me, he says, "Don't hold yourself  
18 responsible for what my son did." And he  
19 said -- and Chris said the same thing. He  
20 says, "It's not your fault." He says,  
21 "I'm -- I'm still your friend." He loved  
22 us -- he loved us both. We're like a  
23 family to him.

24 Q. Did Chris ever talk to you about  
25 what he thought caused the accident?

1           A.       No, but small town, the fire  
2       department who handled the call,  
3       his -- stone throw from my shop, I'm a  
4       past fire chief from the same town, and I  
5       was told by one of the fire departments  
6       that, when he was conscious through this  
7       whole thing, all I heard him say was, "I  
8       didn't hear the air flow, so I opened up  
9       the valve more," or "...full bore."  
10      That's exactly what he told him, and then  
11      after that, that's all -- everything else  
12      is...

13           Q.       You mean, as he's laying there  
14      after he was --

15           A.       Oh, as they were treating him.  
16      He was conscious through this whole thing.  
17      He said right to 'em, "I didn't open up --  
18      I didn't hear..." it was a cold morning,  
19      first of all. It was the coldest days in  
20      February and they filled the tank, had a  
21      heater right above 'em, and he actually  
22      told him, he says, "I didn't hear -- I  
23      didn't hear the air flowing, so I opened  
24      up the valve..." either "full bore" or  
25      "more," and take it from there.

1 Q. And as a person that's done that  
2 same filling operation --

3 A. Uh-hum.

4 Q. -- before and done it many  
5 times --

6 A. Absolutely.

7 Q. -- and taught him how to do  
8 it --

9 A. Correct.

10 Q. -- what does that mean to you,  
11 "opened up the air flow full bore or  
12 more"?

13 A. He was distracted. Something  
14 had to distract him, and it wasn't the  
15 heater.

16 Q. So he is not hearing the air  
17 flow and he's just intent on --

18 A. Right. Let me explain --

19 Q. -- blowing that air in there?

20 A. -- to you. You gotta remember  
21 something. You had a quick scenario, to  
22 bring everybody up to speed here. You  
23 have four large tanks of air. Okay? You  
24 have a small tank you're going to fill.  
25 And the word "cascade" means you're

1 transferring air from A to B, whether you  
2 use one tank, four tanks, two tanks.  
3 Okay? As you hear that air flow...

4 THE WITNESS: ... and you know  
5 this being with Worthington...

6 A. ... you're filling the small  
7 tank, you're going to hear that air flow.  
8 That's why it -- that's how they got the  
9 word "cascade"; you're cascading air flow  
10 from A to B through a series of lines,  
11 gauges, and devices. He didn't hear it,  
12 bang! Hit the valve. Like that throttle  
13 that you -- just pchoo! (ph.) Because  
14 otherwise, if you don't have the valve,  
15 the only way you can shut that tank off is  
16 off the wheel assembly on the valve on the  
17 tank itself, which is more -- it's harder  
18 to get to. That's why they put a ball  
19 valve on it --

20 Q. So he --

21 A. -- for shutoff.

22 Q. -- he didn't hear the air flow,  
23 and so he just starts throttling it even  
24 more?

25 A. Exactly. Exactly. He increased



1 the flow of the cascaded (sic) of air.

2 Q. Who heard that?

3 A. Chris.

4 Q. I mean --

5 A. Oh.

6 Q. He said that there was --

7 A. He said that to -- to whoever  
8 was -- the guys that were treating him on  
9 the fire -- from the fire department.

10 Q. Do you know who?

11 A. Uh!

12 MS. SCOTT: I have it written  
13 down. It was Danny --

14 A. Danny Truex.

15 MS. SCOTT: -- Truex.

16 A. Because I know these guys,  
17 because he's actually had to be a  
18 local -- a local plumber, and they all  
19 know me, I've been in this, you know, and  
20 he actually said to me, he says, probably,  
21 I would say, maybe four months after it  
22 happened, "Yeah, we got talk-- we're on  
23 the job, we're doing the job together, and  
24 he said to me, he said, 'Oh, yeah, by the  
25 way,' and he says -- Oh, he told me -- he

1 told me -- he says, 'Oh, I didn't hear the  
2 heat -- I didn't hear the heater on, full  
3 bored the valve.'"

4 Q. Dan T-r --

5 A. Truex, T-r-u-e-x.

6 Q. And he's with the --

7 A. The fire department.

8 Q. There in Middle --

9 A. Middletown.

10 Q. Can you think of any reason --  
11 well -- that Dan Truex would have to lie  
12 or to make --

13 A. No.

14 Q. -- that up?

15 A. No, he wouldn't, no.

16 Q. You know him?

17 A. Oh, I know him. Yeah, I know  
18 him. He wouldn't have made it up. No  
19 reason to.

20 Q. And I know all this is difficult  
21 to talk about, but what did you hear --  
22 you said you heard that Chris died from  
23 illegal drugs. Any details --

24 A. We --

25 Q. -- what kind of drugs?

1           A.       What do you think it was?  
2       Fentanyl.

3           Q.       Okay.   Who else -- okay.   We  
4       talked about who worked at your shop.   You  
5       worked there that -- for a while Kimberly  
6       Tremberger was there, William Tremberger  
7       was there, I think maybe your wife works  
8       there some, Patty?

9           A.       Uh-hum.

10          Q.       Who else was working?   And maybe  
11       not exactly when the accident happened,  
12       but who were the employees?

13          A.       I have -- at that time, I  
14       have -- well, I have three other  
15       employees.

16          Q.       And who were the three others?

17          A.       Kevin Slover, S-l-o-v-e-r.   He's  
18       been with me -- he's my number two man;  
19       Robby Hawkins, Patty's son --

20          Q.       Robin?

21          A.       Robert.

22          Q.       Robert --

23          A.       Hawkins.

24          Q.       -- Hawkins.

25          A.       -- and Rick Dillon from Catskill

1 Fire. Rick -- Rick worked for me after  
2 the purchase. Is that right? One, two --  
3 I count now, myself, dah, dah, dah, dah.

4 Q. It seems like there was --

5 A. That's it.

6 Q. -- somebody named Arlene that  
7 answered the phone.

8 A. That's as of now.

9 Q. Okay. Not back then?

10 A. No.

11 Q. Okay. As far as filling test  
12 tanks with air, did anybody do that other  
13 than you and Chris?

14 A. I know Kevin didn't. I don't  
15 recall Robby. I mean, he -- Robby was in  
16 my shop when I was in Florida, then I put  
17 him on the road. So I'm going to say  
18 probably not.

19 Q. And then Rick Dillon?

20 A. No.

21 Q. They were more out in the field?

22 A. Correct. Correct.

23 Q. Occasionally I have to kind of  
24 stop and go through my notes and see where  
25 I am, so just bear with me for a few

1 minutes.

2 You know what? Let -- one thing  
3 I haven't done is just gone back a little  
4 bit over your background.

5 What's your date of birth?

6 A. 18 days from today, May 20th,  
7 1959.

8 Q. We're really close in time.

9 And where were you born?

10 A. Middletown. Lived in Warwick.

11 Q. As far as your educational  
12 history, where did you go to high school?

13 A. John S. Burke Catholic High  
14 School, 1973 to '77.

15 Q. And did you go to college?

16 A. Orange County Community College  
17 from 1977 to 1980.

18 Q. And did you get any sort of --

19 A. Yes.

20 Q. -- degree?

21 A. I have a degree in retail  
22 business management, associate's degree.

23 Q. And I don't probably need to go  
24 back over every job you've ever had.

25 A. Didn't have that many.

1 Q. Well, tell me, so what would  
2 have been one of your first major types of  
3 employment? I'm talking other than  
4 working at a mop and pop restaurant or --

5 A. 1984 to 1987.

6 Q. And what was that?

7 A. Georgia Pacific Paper Company.

8 Q. Is there a plant here?

9 A. There was.

10 Q. What did you do there?

11 A. I was a machine operator.

12 1987 to 1992, worked for  
13 Hercules, PFW, as a materials handler. In  
14 the meantime -- in between those jobs,  
15 from 1979, I bought the business. That  
16 was my side job. That was my benefits  
17 job.

18 Q. The business being --

19 A. I owned it, Oprandy's. I bought  
20 Oprandy's in '79, you know, dabbled with  
21 it as a part-time hobby, selling fire  
22 equipment and, you know, I got married and  
23 then had kids and, you know, move on, move  
24 on, and then in 1992 I got laid off from  
25 Hercules, I couldn't collect unemployment,

1 and so I went full bore with this  
2 business, 27 years ago.

3 Q. And then I think it was in 2000  
4 when you bought part of another  
5 person's --

6 A. I bought -- I bought a couple of  
7 companies since 19 --

8 Q. Okay.

9 A. I bought a couple of companies  
10 since -- I bought a couple since 1979. As  
11 a matter of fact, three to be exact.

12 Q. Would Oprandy's be the only  
13 business that you had that -- where you  
14 dealt with cylinders that contained  
15 compressed gas?

16 A. Yes.

17 Q. I thought somewhere you said you  
18 were a firefighter?

19 A. Oh, yeah. I did 30 years of  
20 fire service, as a volunteer.

21 Q. Where did you say?

22 A. I started in Warwick, eight  
23 years, and ended it 21 years in Howells,  
24 and I was chief 2007. Right up the lines.  
25 Done.

1 Q. That was your last year there?

2 A. 2007, yeah.

3 Q. Okay. And of course as a  
4 firefighter, you're dealing with  
5 compressed gases, without a doubt?

6 A. The compressor in question, I --  
7 I was the air guy at the firehouse when  
8 they bought it, from 1989 to 2000, so -- I  
9 trained the guy -- I -- we trained -- we  
10 got trained by Poseidon. I trained all  
11 the guys in my firehouse, when I was a  
12 black hat or a white hat, and that's the  
13 reason I bought it, because I got a record  
14 with it and I just rolled it over to my  
15 shop.

16 Q. Did you ever deal with anybody  
17 at Poseidon that you remember, anybody --

18 A. Dana. Dana Blakely. Dana was  
19 the person who sold us the compressor in  
20 1989. He was one of the one who used to  
21 service it, when I was handling with him,  
22 when I was in the fire district, and he  
23 was the one who came to Florida, New York  
24 when I had it and serviced it.

25 Q. Do you know if he serviced the



1 system at any time -- let's just say since  
2 about 2014, 2015?

3 A. I don't know when it was  
4 serviced last. I don't know when it was  
5 serviced last. I want to say late '14.

6 Q. I'll tell you that we did take  
7 his deposition in this case.

8 A. Okay. So he knew -- he knew who  
9 I was.

10 Q. Have you had any contact with  
11 him about either this incident or this  
12 lawsuit?

13 A. No. No. I don't even know --  
14 is he still with the company? Like I  
15 said, it's been over two years.

16 Q. Well, there have been some  
17 changes.

18 A. Okay.

19 Q. It's a little different now,  
20 but that's kind of what we got into --

21 A. Sure.

22 Q. -- with the deposition, so...  
23 Do you belong to a union?

24 A. No.

25 Q. And your employees don't --

1 A. No.

2 Q. -- belong to a union?

3 How did you first come to know  
4 Christopher Foust?

5 A. To be honest with you, I knew  
6 his father for years. At one time, I  
7 had my -- my -- the -- on the record, I  
8 have a twin brother.

9 Q. Oh, okay.

10 A. My twin brother and I had our  
11 own lawn mowing business, and Chris's  
12 father, Randy, worked for the police  
13 department, used to mow lawns with me. So  
14 I've known him for years. Some place I --  
15 I don't remember -- he must have bumped  
16 into me and said, "Hey, my son Chris is  
17 looking for a job and that's when I was  
18 growing, expanding, I put Robby -- took  
19 Robby off the road, her son, out of the  
20 shop, put him on the road, and that's how  
21 it happened. He came in, I explained  
22 everything to him, and we sat -- sat down  
23 with him, this is what we do, bing, bing,  
24 bing, bing, bing, and he had some  
25 exceptions, he had some issues that he had

1 to address. He was a single dad, he had a  
2 three year old daughter, he says -- who is  
3 going to school in Florida, New York,  
4 which is where my old office was, so I  
5 made his employment very, very  
6 accommodating to him to get my work done.  
7 Okay?

8 He said, one morning, "I'm gonna  
9 be late. I'm gonna -- gotta take my  
10 daughter," this, this, this. I worked  
11 around his schedule. He got paid 40  
12 hours. If I needed anything -- I mean, I  
13 -- he was -- I was accommodating to him.

14 Q. Was he good employee?

15 A. Oh, yes. Work ethics were very  
16 good. The kid was very, very mechanical  
17 inclined, crafty, he had a helicopter's  
18 pilot I found out. Would I want to fly  
19 with him? I don't know. But he had a  
20 helicopter's license.

21 When I moved into my new  
22 building, he did all my IT for me. He  
23 says, here's -- here's the list, get me  
24 the material, I'll come up one night with  
25 my daughter, buy me -- give me coffee,

1 throw me a little bit here, I'll wire your  
2 whole building.

3 Did the whole computer  
4 off -- off hours. I mean, I had no  
5 complaints with the guy.

6 But, bottom line is, and this  
7 whole day, got distracted.

8 Q. Did you come to know Frank Buono  
9 the short time he was your employee?

10 A. No.

11 Q. Do you have any assessment of  
12 his work as an employee in the time he was  
13 there?

14 A. No. Basically, I hired him, I  
15 explained to him, same way I explained  
16 everything to Chris, as far as procedures,  
17 that you'd be working with Chris, here's  
18 our protocol for the day, what time we  
19 start, our hours of operation -- you know,  
20 like a normal employer would do -- rate of  
21 paid, employee handbook received, the W-9  
22 for the taxes, when payroll is, be prompt,  
23 bing, bing, bing, and, after that, I  
24 rolled it -- I -- I introduced him to  
25 Chris, you two work together on this.

1 Chris would be the one who would  
2 rely (sic) to me -- would come back to me  
3 any problems or issues, feedback, or  
4 anything else.

5 So, basically I -- I trained  
6 Chris, Chris trained him, and that's how  
7 it worked.

8 Q. Have you served in the armed  
9 forces?

10 A. Who, me?

11 Q. Yes.

12 A. No.

13 Q. Did Chris ever talk to you about  
14 what happened on the day of the incident?

15 A. Both times we talked, we were --  
16 when we saw him at the hospital, and then  
17 we saw him at the dinner, really didn't --  
18 really didn't say "I screwed up" or didn't  
19 really say any particulars. His sense of  
20 humor was great, his outlook was great.

21 It's like, if he didn't have -- lost his  
22 leg, he would -- it just would have been a  
23 regular day. I mean, he -- his sense of  
24 humor was very good. Like I said, his  
25 outlook in life was very good. "Hey, it

1 was an accident." Exact -- he basic-- "It  
2 was an accident. It's not your fault."

3 Q. Tell me about what you saw on  
4 the day of the accident. Let's just start  
5 at the very beginning.

6 A. I've been waiting for this.

7 Q. What was the first thing that  
8 you remember? Now I'm not talking about  
9 boom, the accident happened. I'm talking  
10 about what's the first thing you remember  
11 in terms of any contact you had with  
12 either Chris or Frank that morning.

13 A. I was waiting for you to ask  
14 this. Let's go the chain of events --

15 Q. Okay.

16 A. -- from start to finish. I live  
17 ten minutes from my office. I got to my  
18 office that Friday morning probably 8:15,  
19 8:20. It was a gentleman from the gas  
20 company, a friend of mine, who was waiting  
21 for me to open up. I had to bring him  
22 a -- he needed a regulator -- a regulator  
23 for his beer gas, and that was around  
24 8:25, 8:30, you know, I unlocked the door.

25 That particular day, both Chris

1 and Frank -- Chris had to do something  
2 with his daughter in the morning, take her  
3 to school. He says, "I'll be in late,  
4 9:00." Frank says, "I'll come in at  
5 9:00," and they punched in about 8:50,  
6 8:55. Okay? He checked in, set himself  
7 up, checked the heat, everything else.

8 About, if not close to 9:00, I  
9 know the guy from either the power company  
10 or another guy had walked in --

11 MS. SCOTT: Nels.

12 A. -- at the same -- Nelson Tree.  
13 I had an account with Nelson Tree Service  
14 and the gentleman came in with a couple of  
15 fire extinguishers. He says, "I need  
16 these retagged, recharged, and I wanna buy  
17 three new ones." He wanted three fire  
18 extinguishers inspected, "I want to  
19 purchase three more."

20 I said, "Okay."

21 He says, "I'll wait outside in  
22 my truck; I got some paperwork to do."

23 I said, "Okay."

24 With that said, I gave Frank his  
25 first job. "Here's three brand new fire

1     extinguishers," took them off the shelf,  
2     "tag 'em, work on these three."

3             "I will."

4             "The gentleman's waiting for  
5     'em."

6             I said to Chris, "Here's the air  
7     tank. I've gotta do a balloon test at  
8     11:00 at a deli with the local fire  
9     inspector. I need this tank done."

10            With that said, Chris went to  
11     fill the tank, Frank was supposedly doing  
12     his job, "I'll be in the office; I gotta  
13     make a phone call."

14            Now, the way my office is set  
15     up, I have two entry doors, one to the  
16     shop, one from the shop to the back room  
17     of where this air compressor is -- they  
18     were both closed -- heat's on, warm -- it  
19     was cold. I'm on the phone, all of a  
20     sudden, I hear, boom! Like, did you ever  
21     hear the furnace malfunction? That's  
22     exactly what it sounded like.

23            I said to the guy, I says, "I'll  
24     call you back." Okay?

25            I go out --



1 Q. Let's stop you right there and  
2 we'll go on with that, the rest.

3 Ill represent to you that Frank  
4 Buono testified several days ago than you  
5 handed him, or you told him, to fill the  
6 test tank with air.

7 A. Absolutely wrong. He had no  
8 training. Why would he want to do it?  
9 That's a lie.

10 Q. Your testimony is that you gave  
11 Frank three fire extinguishers to work on  
12 and that you told Chris to fill the tank?

13 A. Yes.

14 Q. And that you never asked Frank  
15 Buono to fill the test tank?

16 A. That's correct. Also, that tank  
17 that was -- that's in question here, and  
18 two other tanks, were filled by Chris  
19 exactly one week ago, same procedure, same  
20 person. So why would I have somebody else  
21 who knows nothing about it to do it, where  
22 something could happen?

23 Q. Okay. I just wanted to make --

24 A. Oh, no.

25 Q. -- sure we --

1 A. Oh, no.

2 Q. -- we got your testimony?

3 A. Absolutely.

4 Q. At any time, while --

5 A. Hold, hold, hold. Let me -- let  
6 me just stop you for a second. You're  
7 saying that he told you that he --

8 Q. He told us that -- he testified  
9 that you asked -- Chris Buono testified  
10 that you asked him to fill the agent tank  
11 or the -- the test tank.

12 A. Okay. How come in his first  
13 deposition that we just showed you this  
14 morning, he says that he was filling it  
15 and then reversed it and said Chris was  
16 filling it? So who's right and who's  
17 wrong now?

18 Q. I --

19 A. Thank you.

20 Q. I -- I'm -- today, what I think  
21 is important is that we get your version  
22 of what happened. And the only reason  
23 that I'm -- I interject what he said or  
24 what anybody else said is that I wanna  
25 make sure that what you're saying is your

1 testimony and what his is his testimony.

2 So --

3 A. We'll go one step further. I'll  
4 give you the name of the gentleman from  
5 Nelson Tree Service who saw me, told me,  
6 witnessed me giving these extinguishers to  
7 Frank Buono to take care of. He's not in  
8 there. I'll give you his name and  
9 everything.

10 Q. Well, it's -- I think it says  
11 Henry --

12 A. Henry --

13 Q. -- Fairweather.

14 A. -- Fairweather.

15 Q. So he would be able to say that  
16 you gave the three fire extinguishers to  
17 Frank?

18 A. To take care of.

19 Q. So, before we go on with the  
20 sequence of events, all I'm doing is  
21 just --

22 A. Sure.

23 Q. -- clarifying, you never were  
24 back in the room where the test cylinder  
25 was going to be filled that morning

1 immediately prior to them filling it --

2 A. No.

3 Q. -- in terms of seeing how things  
4 are set up or anything?

5 A. Yeah, I might have -- well,  
6 yeah, because I had to go in there and  
7 turn the heat on and turn the lights on.  
8 That was it.

9 Q. But in terms of having been in  
10 there and seeing how the fill hose was set  
11 up, how the connections were set up,  
12 anything like that, you wouldn't have seen  
13 anything about those specifics until maybe  
14 after the accident?

15 A. Yes. That's correct.

16 Q. Okay. So you're in -- and we  
17 can continue.

18 A. Go ahead.

19 Q. You're in your office, you hear  
20 this loud noise. What happens next?

21 A. Well, I walked out to the shop  
22 and the pone on the wall, the receiver is  
23 hanging off the wall. I says, something's  
24 not right here. And then I walk into the  
25 next room and I can't see anything. All I

1 see is like a dust storm. All I hear is  
2 two guys hollering, "My legs, my legs, my  
3 legs." I thought it was a joke, and I  
4 says, "What's going on?" All I heard  
5 Chris say was "The tank exploded."

6 And I couldn't see nothing, so I  
7 ran back in. Meanwhile, I ran back in, I  
8 tried to dial 911. I was just in shock.  
9 Henry Fairweather, who is outside in his  
10 truck, came in, he tried to control me, I  
11 says, "Something happened here. I don't  
12 know."

13 And he -- he -- he says, "You're  
14 as white as a ghost."

15 All I know is, after -- like the  
16 first thing I did was I opened all the  
17 doors, opened all the windows, turned on  
18 the exhaust fan, tried to get the air  
19 moving, just to see what we can see, and  
20 the next thing I know, 911 calls back,  
21 fire department shows up, I got a -- I  
22 went out to the front of the building, I  
23 notified the fire chief, I says, "I had an  
24 explosion, no fire. I think I've got a  
25 severe -- a severe leg..."

1 All I knew, I couldn't see  
2 nothing. I says, "Put a helicopter on  
3 standby. I'll be in my office." And I'm  
4 just sitting there and Henry was in there  
5 trying to console me and that's -- and  
6 everything else the fire department took  
7 over. Everything else was taken over by  
8 the fire department.

9 I just stayed out of it and then  
10 all -- that's -- that's when all hell  
11 broke loose. It was just --

12 Q. Did you ever, after you had  
13 the -- heard the loud noise, did you go  
14 into the room where the cylinder was being  
15 filled prior to the fire department  
16 getting there?

17 A. Yeah. I walked in to see what  
18 was going on quickly, from what I could  
19 see, and I saw that the place -- as the  
20 pictures show -- what was there and all  
21 Chris said was "The tank exploded."  
22 That's all he said to me.

23 Q. So that's when you went --

24 A. And they were both conscious and  
25 talking to me and I know exactly where

1     they were laying down on the floor and  
2     everything else alongside of it --

3           Q.     And how big is that room?

4           A.     18 x 16.   I remember when I  
5     bought the boards, when I constructed it.

6           Q.     And on that morning, was the  
7     Poseidon system generally like in the  
8     corner?

9           A.     Yes.

10          Q.     Could you describe for me when  
11     you looked into the room -- and I  
12     understand there was a lot of white --

13          A.     Uh-hum.

14          Q.     -- smoke or powder?

15          A.     Powder.

16          Q.     -- or whatever, but would you --  
17     could you describe where they were in the  
18     room.

19          A.     If you'd walk out of the door  
20     from the shop, there was a landing,  
21     landing was four foot by the length of the  
22     building, Frank was on the other side of  
23     the landing on the concrete floor, and  
24     Chris was maybe eight feet from him, and  
25     the compressor was across from him.

1 Q. I think what I'm going to do,  
2 and I understand this is not to scale, if  
3 you could like draw a rectangle that shows  
4 the room, show where -- put P for where  
5 the Poseidon system is, put C for where  
6 Chris is, and put --

7 A. No problem.

8 Q. -- F for where Frank was, and  
9 show the door going in the room.

10 A. You got a magic marker? That  
11 will work better.

12 Q. See if that does any better.

13 A. This is the landing  
14 (indicating). Over here was the -- here  
15 was -- the Poseidon air compressor was  
16 here (indicating). Here (indicating) is  
17 the landing. This is the door  
18 (indicating), this is the existing shop  
19 (indicating), this here is all racks  
20 (indicating). Okay? This is where Frank  
21 ended up (indicating). And over here --  
22 here is the Poseidon (indicating), and  
23 Chris was someplace over here  
24 (indicating). Okay.

25 Let me -- this is --



1 THE VIDEOGRAPHER: You want a  
2 shot of that?

3 THE WITNESS: (Displaying photo  
4 for videographer). I never was a good  
5 architect.

6 Q. So point to where the Poseidon  
7 system is.

8 A. Okay. Here is the room  
9 (indicating). It's 18 x 18, 16 x 16.  
10 This is the entrance (indicating) that  
11 goes out to the parking lot, which is what  
12 the EMS crew used. There's a landing that  
13 goes across and this (indicating) is  
14 coming out of a shop. My office is over  
15 here (indicating). This is grade  
16 (indicating). You would step down six  
17 inches to the concrete floor. This is  
18 where Frank was (indicating), these were  
19 the racks of all the fire extinguishers  
20 (indicating), the back corner was the  
21 compressor and the tanks secured to the  
22 wall, and Chris was over here  
23 (indicating). He was filling that in  
24 front and the force of the explosion  
25 pushed him that way (indicating). And

1 this was all open in the middle.

2 Q. So if, in your experience, when  
3 you were filling tanks with air from the  
4 Poseidon system, how far from the Poseidon  
5 system would you be?

6 A. Well, in front of that Poseidon  
7 compressor are two chambers that you're  
8 supposed to put the tank in. So you would  
9 fill it right in front of it because all  
10 your gauges and stuff are on the  
11 compressor.

12 So, why he didn't use to those  
13 gauges is beyond me. He filled it on the  
14 ground. That's why everything was below.

15 If you look at the severity,  
16 everything went across there from the  
17 knees down. If it was higher up, it would  
18 have been a higher projection. The tank  
19 was on the ground being filled, so when it  
20 exploded, it went like this (indicating).  
21 And he happened to be in the line of fire,  
22 and so did Frank.

23 Q. So how is it different if they  
24 used the compressor to fill it and they're  
25 using the gauges? What are the -- the

1 gages --

2 A. They're different.

3 The -- the -- and -- and I'm saying this  
4 from Day 1: Let's throw the compressor  
5 out of the whole concept. The compressor  
6 was never hooked up, never used. When I  
7 left Florida, New York, knowing I was  
8 moving to a new building, I filled all  
9 four of those tanks with 4500 pounds of  
10 air, because I can use the air compre-- I  
11 can use the cascade system at any time  
12 without the compressor until I need air.  
13 All the compressor does is it compresses  
14 air and fills the tanks. I can -- I could  
15 have filled 20 of those tanks,  
16 whatever you -- you would never, ever,  
17 ever using the compressor, and that's when  
18 I explained to OSHA, "Don't even bring  
19 Poseidon into this picture, because the  
20 compressor never ran." The compressor the  
21 last time ran was July of '15 at my old  
22 location when I topped off all four of  
23 those tanks to relocate.

24 Q. Did you -- when you purchased  
25 the compressor from Poseidon, did you also

1 purchase the tanks and the regulator?

2 A. Came as package deal. And I've  
3 been saying that from Day 1 and I said  
4 right to the OSHA guy. I said, "Come  
5 here; let me show you. Here's the  
6 compressor. Do you see a wire going from  
7 the five horsepower motor to an on/off  
8 switch on the floor like you're supposed  
9 to have, back to my panel?" He says,  
10 "No." I said, "Poseidon is not even  
11 involved in this, because it was never  
12 used."

13 Q. When you walked into the room  
14 after the incident, was the compressor  
15 running?

16 A. No re-- again --

17 Q. That's -- I'm just clarifying --

18 A. No.

19 Q. -- that for the record.

20 A. Never, ever, electrically hooked  
21 up.

22 Q. That --

23 A. Still to this day, not hooked  
24 up.

25 Q. That's -- that's what I'm

1 clarifying for the record.

2 A. Never hooked up. Like I said, I  
3 could have filled 20 of those 175 pound  
4 tanks until they ran out of air and then  
5 I'd either have to go someplace else and  
6 get air or fire up -- or -- or wire the  
7 compressor.

8 Q. As far as using the tanks in the  
9 cascade system, am I correct that you can  
10 hook up to any one of four tanks to fill a  
11 cylinder?

12 A. Yes. Again, it works off the  
13 word "cascade": One, two, three, four.  
14 It's called a bank of tanks. You can put  
15 two tanks, four tanks. I've seen five,  
16 six, seven, eight, nine, ten. You start  
17 with your first tank, fill it up, you open  
18 up the valve. Okay? As that tank lowers  
19 down, where if you get down to 100 pounds  
20 and you have to cascade to 200 pounds,  
21 what's going to happen? It's not going to  
22 get any air flow. So tank -- go to your  
23 next tank, run out of air, you go to your  
24 third tank, and then go to your fourth  
25 tank. Just keep on going. That's how the

1 word "cascade" comes in.

2 Q. So each -- that's how you keep  
3 the cascade --

4 A. Correct.

5 Q. -- going?

6 So each time you go to a new  
7 tank, are you rehooking up the connection?  
8 Is that how it works?

9 A. No. The connection that you're  
10 filling to always stays the same. You're  
11 only just changing your lines as you  
12 progress down the --

13 Q. So the regulator never moves if  
14 you --

15 A. Absolutely --

16 Q. -- if you're using a regulator?

17 A. Regulator is set once, it stays.

18 THE VIDEOGRAPHER: We have ten  
19 minutes.

20 Q. Since you didn't go into --  
21 since you didn't see the cascade system in  
22 any detail that morning as they were  
23 setting it up to fill the tank, I take it  
24 that you don't know how the regulator was  
25 set at the time of the accident; is

1       that --

2           A.       No --

3           Q.       -- correct?

4           A.       -- that's correct.

5           Q.       Can't say one way or another?

6           A.       Can't say.

7                   I will say that -- I said this  
8       before -- that Chris, one week ago, filled  
9       three tanks the same procedure, same way,  
10      so I'm going to presume that those gauges  
11      were set at the last position, which was  
12      175. You wouldn't have to -- nothing else  
13      was filled between one Friday to next  
14      Friday. We never used -- never used --  
15      had to use the cascade system.

16          Q.       When you trained Chris on  
17      filling cylinders, what did you train him  
18      to do as far as the regulator from the  
19      cascade system?

20          A.       Always make sure that your  
21      regulator is set to the proper  
22      procedure -- to the proper fill pressure  
23      of the tank you're filling, because you  
24      could fill a tank at 175, you can fill it  
25      a SC-- a self-contained -- a breathing air

1 pack to 2000 pounds, 4500 pounds, you have  
2 to set the regulator based on the tank  
3 that you're filling.

4 Q. And did you give him any  
5 direction as far as where to look on a  
6 test tank to know what pressure you are  
7 filling to?

8 A. Yes, because, like I said, he  
9 was very knowledgeable, and I said, if  
10 filling this tank of air is this -- is  
11 this is -- is -- is the same as if you're  
12 filling a tank for a fire -- a fire  
13 extinguisher; you've got a gauge on it.  
14 In order to fill anything, whether it's a  
15 compressed air cylinder or fire-- they  
16 have to have gauge in it, always check  
17 your gauge.

18 Q. The gauge is going to show you  
19 the number?

20 A. That's you're working pressure,  
21 yes.

22 Q. And if, for example, on this  
23 tank, the gauge in the green area says  
24 175, what was your training to Chris  
25 concerning where to set that part of the



1 regulator, the part going into the tank?

2 What --

3 A. No more than 25 pounds greater  
4 than your test -- your service pressure,  
5 which would be no greater than the working  
6 pressure, which would be 175 and 25 is  
7 220. Oh, no, 205. What's 1 -- 1 -- 200.  
8 200 pounds.

9 THE VIDEOGRAPHER: Running out  
10 of time. About four minutes left.

11 Q. Is it your testimony, sitting  
12 here today that what -- let me ask you:  
13 Was Chris supposed to be in that room that  
14 morning?

15 A. Yes. Only Chris.

16 Q. Was Frank supposed to be in that  
17 room that morning?

18 A. No.

19 Q. Whatever happened to the  
20 extinguishers that you testified to that  
21 you gave Frank to work on?

22 A. What happened to them?

23 Q. Yeah.

24 A. Oh, God. With my rec-- as far  
25 as my recollection, I think either I did

1     it or William, who came in -- somebody --  
2     you know, everything -- that day -- they  
3     could have been done that day or they  
4     might have done that following Monday,  
5     once everything settled, but they did go  
6     back out to the customer.

7                   MS. STIGALL: One more question  
8                   and then we're going to try and get  
9                   this stopped.

10                   (Referring to drilling and  
11                   hammering on roof.)

12           Q.     I guess my question was, that  
13           morning, you assigned Frank Buono to do  
14           these fire extinguishers?

15           A.     Uh-hum.

16           Q.     Did he go back and do that?

17           A.     No, because he -- I don't -- he  
18           never did 'em in the first place, because  
19           they were still, after the accident, all  
20           this was going on, the three brand new  
21           fire extinguishers were still sitting on  
22           the work bench where I left them for him  
23           to do and the three from Nelson Tree were  
24           still sitting next to him. So he never  
25           did them.

1 MS. STIGALL: Let's go head  
2 and...

3 THE VIDEOGRAPHER: The time is  
4 12:51. We're going off the record.  
5 This is the end of Media File No. 1.

6 (Recess.)  
7  
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1           A F T E R N O O N           S E S S I O N

2                           1:49 p.m.

3  
4           THE VIDEOGRAPHER:   Good  
5           afternoon.   We're back on the record.  
6           The time is 1:49.   This is the  
7           beginning of Media File No. 3.

8  
9   B R I A N       S C O T T ,  
10   having been previously duly sworn,  
11   testified further as follows:

12   CONTINUED EXAMINATION

13   BY MS. STIGALL:

14       Q.       Mr. Scott, we've moved, we're  
15   now away from the pounding that was on the  
16   roof?

17           THE VIDEOGRAPHER:   Can you put  
18   your mike on?

19       Q.       We're now away from the pounding  
20   that was on the roof and now I have my  
21   mike on, so we'll go ahead and proceed.

22           I'm going to hand you a few  
23   documents that we marked as additional  
24   exhibits during the break, and just for  
25   identification, so we get those in the

1 record --

2 A. Okay.

3 Q. -- the first document I have is  
4 listed as Defendant's Exhibit 19 and I  
5 understand those to be kind of time cards  
6 for Chris Foust and Frank Buono for  
7 February.

8 (Defendant's Exhibit 19, time  
9 cards for Chris Foust and Frank Buono  
10 for February 2016, marked for  
11 identification, this date.)

12 Q. Can you identify them as that?

13 A. Yes. First one is for Chris  
14 Foust for February of '16 and the second  
15 one is for Frank Buono for the same month  
16 of '16.

17 Q. Thank you.

18 (Defendant's Exhibit 20,  
19 Worker's Compensation claim notes for  
20 Chris Foust and Frank Buono, marked  
21 for identification, this date.)

22 Q. Next, as Defendant's Exhibit 20,  
23 I have some notes taken regarding, I think  
24 it's the Worker's Compensation claim.  
25 Could you identify to me Defendant's

1 Exhibit 20, whose handwriting those notes  
2 are in, if you know?

3 A. It's not mine. I don't know  
4 whose handwriting it is, but it has the  
5 claim number Chris Foust with his address,  
6 and also has a claim number for Frank  
7 Buono, with -- I assume these last numbers  
8 are -- the numbers are the Social Security  
9 numbers.

10 Q. And I'll just represent to you  
11 that was a document I received from your  
12 wife, Patty. Does it look to you to be  
13 something that maybe would have been in  
14 your file?

15 A. Yes.

16 Q. Your business records?

17 A. Absolutely.

18 (Defendant's Exhibit 21, copy of  
19 a spiral notebook containing notes  
20 kept by Patty Scott relating to  
21 contact with parties involved with the  
22 accident, marked for identification,  
23 this date.)

24 Q. Now, as to Defendant's  
25 Exhibit 21, can you tell me what that is.

1           A.       This is a spiral notebook -- a  
2       copy of a spiral notebook -- of notes that  
3       my wife Patty started the day of the  
4       accident with everybody who -- all parties  
5       that were involved, including Hartford,  
6       Department of Labor, DKY, who were the  
7       cleanup company, the insurance company,  
8       lawyers. This is all -- everything --  
9       this is a regular -- a ledger book that we  
10      kept from the date of the accident in  
11      contact with any parties involved  
12      regarding the incident.

13          Q.       And that is Defendant's  
14      Exhibit 21?

15          A.       Yes.

16                   (Defendant's Exhibit 22,  
17      prescription for Fentanyl Transdermal  
18      System, marked for identification,  
19      this date.)

20          Q.       And finally, I've got  
21      Defendant's Exhibit 22, which is an  
22      exhibit I received from your wife, as I  
23      understand. As I understand, it was  
24      something that she found when she was  
25      looking for keys to move a car after the

1 accident?

2 A. Correct. I can re-- in the shop  
3 of the building, not -- excluding from the  
4 room of where the accident happened, Chris  
5 had his desk and that's where he used to  
6 keep his stuff, and, after the accident,  
7 we had to move his car and, in turn, we  
8 found these prescriptions of fentanyl,  
9 and, yes, that belonged to Chris.

10 Q. So that we're clear, Defendant's  
11 Exhibit 22, was that found on the day of  
12 the accident?

13 A. If not the day of the accident,  
14 within 24 hours of the accident, yes.

15 Q. When you were going to move the  
16 car?

17 A. Correct.

18 Q. And I see that this is a  
19 prescription for Fentanyl Transdermal  
20 System, 100 milligrams an hour, expiration  
21 date August 2017.

22 Is that what you understand  
23 it --

24 A. Yes --

25 Q. -- to be?



1           A.       -- it is. Yes.

2                   (Defendant's Exhibit 23, diagram  
3       drawn by witness at today's deposition  
4       showing layout of room where incident  
5       occurred, marked for identification,  
6       this date.)

7           Q.       And finally, we have Defendant's  
8       Exhibit 23, that was utilized by you  
9       earlier in this deposition. If you can  
10      just describe, generally, what you were  
11      doing when you drew that.

12          A.       Basically, I showed the parties  
13      here of a layout of the room of where the  
14      incident happened on that date in  
15      February, showing the position of the  
16      equipment, the doorways, and exactly when  
17      I entered the room after the incident  
18      happened of where both Mr. Foust and  
19      Mr. Buono were on the ground.

20          Q.       Thank you.

21                  MS. STIGALL: I'm going to go  
22      pass you as a witness at this time and  
23      allow -- I think plaintiff's attorney  
24      is going to ask you, Mr. Fromson is  
25      going to ask you, some questions.

1 THE VIDEOGRAPHER: Can you clip  
2 on?

3 MR. FROMSON: Absolutely.

4 EXAMINATION BY MR. FROMSON:

5 Q. Good afternoon, Mr. Scott.

6 A. Okay.

7 Q. My name is Ken Fromson. Excuse  
8 my hoarse voice. I will be brief this  
9 afternoon. I have a couple of follow-up  
10 questions. I'll try not to be  
11 duplicative. Okay?

12 A. Okay.

13 Q. Just keep all your answers  
14 verbal as opposed to providing a shrug of  
15 the shoulders or a nod of the head.

16 A. Okay.

17 Q. If there's a question you don't  
18 understand, let me know; I'll rephrase it  
19 for you. Fair enough?

20 A. Fair enough.

21 Q. Okay. Earlier in your  
22 testimony, you had described that the air  
23 compressor was literally not hooked up to  
24 an electrical outlet. Do you recall  
25 generally --

1           A.       Yes.

2           Q.       -- explaining that?

3                    You had indicated -- and I'm  
4 paraphrasing you -- that the cascade  
5 system bottles of air may have been  
6 electrified?

7           A.       No.

8           Q.       So is it fair to say that  
9 neither the compressor or the cascade  
10 system was plugged in to anything?

11          A.       Correct.

12          Q.       No electricity whatsoever to  
13 either of those devices; correct?

14          A.       Absolutely, yes.

15          Q.       Thank you.

16                    Earlier in your testimony, when  
17 you were describing the facts, the events  
18 that you experienced on that day, at some  
19 point you indicated that you went into  
20 your office and that then all hell broke  
21 loose. Do you recall generally making  
22 that statement?

23          A.       Yes.

24          Q.       What do you mean when you  
25 reference "all hell broke loose" after you

1     went into your office and the event had  
2     already happened?

3           A.     Like I said, I was on the phone,  
4     I was on the phone with a vendor, a  
5     supplier, and I heard -- heard an  
6     explosion, I hung up the phone and I went  
7     out into the shop and saw nobody in the  
8     main shop, and I went in through the next  
9     door and all I saw was powder and that's  
10    when I heard all the screaming and the  
11    hollering of "Hey, explosion, I lost my  
12    leg, my leg, my legs," and that's when  
13    everything started.

14          Q.     And so I may have misunderstood  
15    your answer earlier in the day. I took  
16    your answer to mean you had called, that  
17    there was a call to 911, that you left the  
18    treatment to be done by EMS and fire  
19    department, and that you then went into  
20    your office and then all hell broke loose.

21          A.     No.

22          Q.     So it's --

23          A.     No.

24          Q.     When you referenced that hell  
25    had broken loose, did --

1 A. Hell had broke loose --

2 Q. -- the events?

3 A. From the time I heard that  
4 explosion till I walked out, saw the  
5 phone, the phone was off the hook in the  
6 shop, nobody in the shop, then I looked  
7 into the other room, all I saw was powder  
8 and dust, and that's where everybody was,  
9 that's when everything -- thing -- that's  
10 when everybody hell broke -- I was not the  
11 first one to call 911, by the way.

12 Q. And thank you for the  
13 clarification.

14 A. Okay.

15 Q. Have you seen the OSHA report  
16 related to the government's investigation  
17 of what transpired?

18 A. The official, well, I don't  
19 recall seeing it. We did get it. Did we  
20 get it?

21 Q. Have you --

22 A. Yes.

23 Q. Have you seen the -- the  
24 citations and notifications --

25 A. Yes.

1 Q. -- and --

2 A. Yes.

3 Q. -- penalties --

4 A. Yes.

5 Q. Hold on a second. Just let me  
6 finish before you answer, for the benefit  
7 of the court reporter. You're  
8 anticipating my questions, and I  
9 appreciate that. Consider it to be more  
10 of a question-and-answer session --

11 A. Okay.

12 Q. -- again, for his benefit,  
13 because he can't type us both down at the  
14 same time. Are you with me? Yes?

15 A. Yes.

16 Q. Fantastic.

17 So did you receive the citation  
18 and notifications of penalties summarizing  
19 the issues in the investigation result?

20 A. Yes, I did.

21 Q. Was it your understanding that  
22 on the day of the event Chris Foust was  
23 attempting to fill this subject tank with  
24 compressed air?

25 A. Yes.

1           Q.       And was it your understanding  
2       that there was an air line, or a hose,  
3       that was connected to the Poseidon cascade  
4       system that then led to the subject tank  
5       and valve assembly?

6           A.       Yes.

7           Q.       And was it your understanding  
8       that Oprandy's Fire used the cylinder and  
9       valve assembly product as a portable  
10      compressed air source for testing fire  
11      suppression systems at field sites?

12          A.       Yes.

13          Q.       In your industry, what does it  
14      mean when you use the term "to test fire  
15      suppression systems"?

16          A.       So, juris-- under the standards,  
17      authorities have a -- jurisdictions, or  
18      fire inspectors or building inspectors,  
19      require that when a commercial restaurant  
20      system is installed, you have to perform  
21      what they call a balloon test, and the  
22      balloon test works as the following: The  
23      whole entire fire suppression system is  
24      installed. You have to remove the tank of  
25      liquid agent, which is the final component

1 of the test, remove that cylinder, and you  
2 are to replace that tank with a tank of  
3 air. Okay?

4           You set whole system up, you  
5 take the nozzles off the -- the nozzle  
6 come off the drops, you put balloons on  
7 them. It has to be witnessed by a fire  
8 inspector, and you do what they call a  
9 balloon test. The tank that you fill with  
10 air -- you go through the whole cycle.  
11 You pull the pull stations, shuts off the  
12 gas valves, trips any fire alarms, fills  
13 the balloons with air, fire inspector  
14 witnesses it you take pictures, you sign  
15 off, you're done. Now you know that the  
16 system will work.

17           What you do is, you're doing an  
18 air test to make sure it works instead of  
19 the real test of liquid, which can be  
20 expensive and very costly, or, excuse me,  
21 messy. So it's a balloon test and it's in  
22 the -- and it's in the(indicating)  
23 "standards" of that we go by to perform a  
24 balloon test at the discretion of the  
25 authority having jurisdiction.



1           Q.       You had described earlier in  
2       your testimony that Chris Foust,  
3       approximately a week earlier, had filled  
4       other tanks in the same general way that  
5       he was performing his work on this day of  
6       the event. Do you recall generally --

7           A.       Yes.

8           Q.       -- testifying to that?

9                   Those other tanks from  
10       approximately a week earlier, were those  
11       also Worthington tanks with the similar  
12       fire -- or Kitchen Knight valve assembly?

13          A.       Exactly the same. The system  
14       happened to be at a restaurant and the  
15       reason there were three, because there was  
16       a renovation on a restaurant, one system  
17       had two tanks, one system had one tank.  
18       So, instead of running back and forth to  
19       fill tanks, I had three tanks. You had to  
20       put two tanks on one test, one tank on the  
21       other, two tests. Exact same cylinder,  
22       same size, same -- same everything. Same.

23          Q.       As you sit here today, do you  
24       have an independent recollection of  
25       assigning Chris Foust that job

1 approximately a week earlier related to  
2 the other tanks?

3 A. I do have a recollection of it.  
4 I -- that was a Friday morning, and I  
5 specifically said to Chris, I says, "I  
6 have a -- I have a test in the morning, I  
7 need three tanks filled, I have to be  
8 at..." such and such a job down the  
9 street, in whatever time we figured, "...  
10 to do a balloon test," and he said -- I  
11 said, "Can you fill the tanks?" And he  
12 said, "Yes."

13 Q. In terms of the protocol,  
14 standard operating procedure back then  
15 related to these other tanks,  
16 approximately a week earlier --

17 A. Uh-hum.

18 Q. -- from where would these tanks  
19 be retrieved within Oprandy's Fire?

20 A. When you say "retrieved" --

21 Q. Where do you get them from?

22 A. Well, the tank that was involved  
23 in the incident --

24 Q. I'm not asking you about that  
25 yet. The tanks that are used a week

1 earlier.

2 A. They were old, they were -- they  
3 were Pyro-Chem tanks that were no longer  
4 eligible to be used for final end product  
5 because of the fact of the tank was either  
6 too small, it was undersized, the  
7 labelling was off of it, but it could  
8 still be used as an air tank for testing,  
9 because of the situation where you can get  
10 multiple tanks when you need two tanks at  
11 the same time.

12 Q. Were these tanks -- and I may  
13 have asked you earlier, so I need some  
14 clarification. These tanks that were used  
15 for that restaurant approximately a week  
16 earlier, were they the same cylinder size,  
17 p.s.i. and valve assembly on those that  
18 was being used on the day of our event in  
19 February of 2016?

20 A. Same pressure, same  
21 manufacturer, same style. As far as the  
22 size, it could have been up or down a  
23 size, but, when it comes to air, air is  
24 air and tank is tank, but they were  
25 identical carbon copies.

1 Q. And how would it be that  
2 Oprandy's Fire would store those tanks  
3 before assigning them to Chris? Would  
4 they be situated somewhere that they were  
5 full, or would they be situated somewhere  
6 where they were empty or half full or half  
7 empty, such that Chris would then take  
8 them and fill them?

9 A. Usually, if -- at the morning of  
10 the incident, that tank was empty.

11 Q. I'm asking about the one a week  
12 earlier or the several a week earlier.

13 A. They're empty until I need them.

14 Q. So that's -- thank you for that  
15 clarification.

16 When you say they're empty until  
17 you need them, how was it, in your usual  
18 course of business, that Oprandy's Fire  
19 would know they were empty?

20 A. I would be the only one doing  
21 the testing, and it would be discharged on  
22 the job for the test, I'd come back and  
23 I'll put them on the shelf and leave them  
24 until I need them for the next time, which  
25 could be whenever.

1           Q.       So, presumably, the tanks that  
2       he had used for the restaurant  
3       approximately a week earlier came from  
4       some area of Oprandy's Fire and presumably  
5       they were empty because they had been used  
6       at some point even earlier until they were  
7       emptied. Is that fair?

8           A.       Yes.

9           Q.       And it would be your  
10       understanding that each of those tanks  
11       would have had a gauge, a pressure gauge  
12       on, or attached to the valve assembly, on  
13       those respective tanks; right?

14          A.       Yes.

15          Q.       And it would be your  
16       understanding that those would be reading  
17       as empty?

18          A.       Yes.

19          Q.       Now, those -- you're very  
20       familiar with those pressure gauges;  
21       right?

22          A.       Yes.

23          Q.       Is it fair to say those pressure  
24       gauges, back then, they didn't have an  
25       "Empty" word? The word "empty", I'm using

1 that word, but the gauges didn't say  
2 "Empty"; correct?

3 A. Correct.

4 Q. How would they have indicated to  
5 a user, or someone like yourself, that  
6 they were not full?

7 A. If it was full, it would be at  
8 12:00; if it was empty, it will be below  
9 12:00, whether it could be at 9:00, 8:00,  
10 7:00, but someplace, if it was below  
11 12:00, you know right away it had no  
12 pressure in it and I would know because of  
13 the fact because I'm the one who  
14 discharged it.

15 Q. Now, let me ask you about the  
16 tank in question, the product in question,  
17 that was the subject of this event where  
18 these individuals were hurt. Okay?

19 A. Okay.

20 Q. How did you know, or what basis  
21 do you have to tell us, that that subject  
22 tank was empty at the time that Chris  
23 Foust attempted to fill it?

24 A. Because exactly one week ago  
25 that tank, along with the two other tanks,

1     were used, total of three tanks, were used  
2     in a balloon test, and they were empty,  
3     and I left them on the shelf, and I didn't  
4     know about this -- that February 12th,  
5     that test, I didn't know that that test  
6     was going to happen until the day before.  
7     So I would leave the tank empty and then  
8     do what I need for Friday morning at  
9     11:00, fill it.

10        Q.     Do you have any documentation,  
11     anything whatsoever, that would  
12     corroborate what you're telling us, that  
13     these tanks -- in particular, this subject  
14     tank -- was utilized and was in fact  
15     empty?

16        A.     The only thing I would have  
17     would be the day I did the --

18        Q.     The balloon test?

19        A.     -- the day I did the balloon  
20     test.

21        Q.     Okay. So if you needed to, if  
22     you wanted to prove that you had actually  
23     done a balloon test at a restaurant, you  
24     could potentially look back to your  
25     records?

1           A.       I know exactly what the name of  
2       the account was, the day I did, and who  
3       the inspector was.

4           Q.       Do you recall now?

5           A.       I exactly know.

6           Q.       Tell us who.

7           A.       It was the Town of Walkill,  
8       Middletown, New York. It was at Cosmo's  
9       Pizzeria, Route 211 East, and the  
10      inspector was a gentleman by the name of  
11      Nick Elia. He was my witness to the air  
12      test. We have did a double -- double  
13      system. It was a renovation. It was a  
14      restaurant under renovation and due to  
15      final CO, that morning we had to do a  
16      balloon test.

17                   (Discussion held off the  
18      record.)

19                   THE WITNESS: E-l-i-a. Dominick  
20      Elia.

21                   MS. STIGALL: Did you say a  
22      final C...

23                   THE WITNESS: CO, certificate of  
24      occupancy.

25           Q.       What was Dominick Elia's



1 relationship to the situation?

2 A. He was the Town of Walkill  
3 building inspector/code enforcement  
4 officer, mostly building inspector.

5 Q. Now, let me change -- change  
6 subjects --

7 A. Go ahead.

8 Q. -- for a moment.

9 The maximum pressure available  
10 from the Poseidon cascade system, was that  
11 approximately 4,000 p.s.i.?

12 A. 4500. That's the most the tanks  
13 can -- that's the most the tanks can take,  
14 because when you turn them off the compressor,  
15 the compressor automatically shuts off at  
16 4500. So you can't max out.

17 Q. And you are referencing the  
18 Poseidon cascade system that was at  
19 Oprandy's fire on the day of the event?  
20 Yes?

21 A. Yes.

22 Q. Yes?

23 A. Yes.

24 Q. I want to make sure.

25 A. Yes, yes, yes, yes.

1           Q.       In terms of the actions that  
2       were taken by Messrs. Foust and Buono, was  
3       it your understanding that they were --  
4       they would listen for the sound of air  
5       flowing into the cylinder and watch the  
6       pressure gauge on the valve assembly on  
7       the top of the cylinder until it indicated  
8       the cylinder was full?

9           A.       No.

10          Q.       Is it true that Chris Foust was  
11       not certified to service fire  
12       extinguishers?

13          A.       Now, reiterate that, as far as  
14       "service".

15          Q.       Let me see --

16          A.       There's a -- there's a -- some  
17       clarification.

18          Q.       I would represent to you that  
19       the OSHA report in this case indicated  
20       certain facts based upon what the OSHA  
21       individuals had investigated; in part,  
22       that employees Foust and Buono performed  
23       hydrostatic testing of low-pressure DOT  
24       cylinders and fire extinguishers. Is  
25       that -- do you agree with that?

1           A.       No.

2           Q.       Do you know how an individual  
3       from OSHA would have received that  
4       information?

5           A.       It didn't come from me, because  
6       I am not -- I -- I can hydrotest  
7       low-pressure cylinders, not DOT cylinders,  
8       and OSHA knew that.

9           Q.       I would want you to assume the  
10       OSHA report states that neither Mr. Foust  
11       or Mr. Buono were certified to service  
12       fire extinguishers, perform hydrostatic  
13       tests, in the context of the way the OSHA  
14       report used the term "certify". Do you  
15       have an understanding, given your industry  
16       knowledge, as to what they're talking  
17       about?

18          A.       Correct, but the word "service"  
19       is very vague. "Service", I have four  
20       technicians, including myself. We service  
21       on the road. When they come in the shop,  
22       they don't service 'em. They do  
23       maintenance on 'em or recharging or  
24       low-pressure testing. So the word  
25       "service", it has some clarification on

1 it.

2 Q. So in the industry, the term  
3 "service" is the --

4 A. We service.

5 Q. In the industry, the term  
6 "service" is distinctly different than  
7 "recharging"; correct?

8 A. Absolutely, yes.

9 Q. Thank you for the clarification.  
10 Now, I'd ask you to consider the cascade  
11 system with the compressor, as you  
12 understood it was configured back on the  
13 day of the event. Can you picture it in  
14 your mind?

15 A. Absolutely.

16 Q. And have you seen the  
17 photographs from the OSHA report that  
18 depict the red cascade -- the red  
19 compressor with the cascade system behind  
20 it?

21 A. Yes.

22 Q. And are those fair and accurate  
23 as to that being the compressor and the  
24 cascade system that Oprandy's had acquired  
25 from the fire district many years ago?

1           A.       Yes.

2           Q.       So now, just focus on the  
3 compressor and the cascade system for me.

4                   Was there any language on that,  
5 whether it be a fixed by a label or a  
6 sticker or a card or a tag, that  
7 instructed users as to the pressurization  
8 of cylinders that would be getting filled  
9 with air?

10          A.       No.

11          Q.       Same question. I'm going to go  
12 down a list of a bunch of item. Alright?

13          A.       Okay.

14          Q.       Same question: Any such  
15 language as to overpressurization?

16          A.       No.

17          Q.       Was there any such language to  
18 review the manufacturing service manuals?

19          A.       No.

20          Q.       Was there any such language to  
21 use certain tools?

22          A.       No.

23          Q.       Was there any such language to  
24 use certain recharge materials?

25          A.       No.

1 Q. Was there any such language to  
2 use certain lubricants?

3 A. No.

4 Q. Was there any such language to  
5 charge only to a certain pressure?

6 A. Language as far as what?

7 Q. Such as a warning or instruction  
8 not to overpressurize, but only to go to a  
9 certain p.s.i.?

10 A. No.

11 Q. Was there any language to  
12 utilize or use a pressure relief device?

13 A. No.

14 Q. Was there any language to  
15 confirm that the agent --

16 A. Back to --

17 Q. Yes.

18 A. On that pressure relief valve,  
19 resay that again.

20 Q. Absolutely. And we're only  
21 talking about the cascades system and the  
22 compressor. Was there any such language  
23 to utilize a pressure relief device while  
24 filling an agent tank?

25 A. There -- yes, there -- the --

1     verbally, on all high-pressure cylinders,  
2     there's a relief valve built right into  
3     the cylinder. A self-contained breathing  
4     apparatus is high pressure. By the  
5     manufacturer, and by everything else, you  
6     have to have a blowoff disc, so that  
7     you're only supposed to put in 500 pounds,  
8     you put in 700 pounds, everybody has that  
9     fallacy that the tank will devalue. No.  
10    It actually blows a safety. That's --  
11    that's common sense.

12           Q.     You referenced "verbally", so I  
13    want to make sure my question is clear.  
14    Was there any language on the compressor  
15    or the cascade system -- whether affixed  
16    by label, sticker, card, or tag -- that  
17    instructed users to utilize a pressure  
18    relief device while filling an agent tank?

19           A.     No.

20           Q.     Any such language to confirm the  
21    agent tank's own pressure gauge on the  
22    valve assembly was functional?

23           A.     No.

24           Q.     Now I'm going to ask you the  
25    very same questions, but solely as it

1       pertains to the tank and valve assembly.

2           A.        Alright.

3           Q.        So, as a foundation, can you  
4       picture in your mind the actual tank and  
5       valve assembly in this case?

6           A.        Yes.

7           Q.        Was there any language on either  
8       the cylinder or the valve assembly, or  
9       affixed to it by label, sticker, card or  
10      tag, that instructed users as to the  
11      pressurization of the cylinder?

12          A.        No.

13          Q.        Language not to overpressurize  
14      the cylinder?

15          A.        No.

16          Q.        Was there language to review the  
17      manufacturer's servicing manuals?

18          A.        No.

19          Q.        Was there any language to use  
20      certain tools?

21          A.        No.

22          Q.        Was there any language to use  
23      certain recharge materials?

24          A.        No.

25          Q.        Was there language to use



1 certain lubricants?

2 A. No.

3 Q. Was there language to only  
4 charge to a certain pressure?

5 A. No.

6 Q. Was there any language to use a  
7 certain pressurizing adaptor?

8 A. Language written? No.

9 Q. Was there any language to use a  
10 pressure relief device?

11 A. No.

12 Q. Now, you had talked earlier  
13 about how to know when a tank is full and  
14 you used the expression "at 12:00, you're  
15 full." Do you remember generally --

16 A. Sure.

17 Q. -- explaining that to us?

18 A. Yes.

19 Q. So, do you have an understanding  
20 as to what can render a tank's pressure  
21 gauge to not function properly?

22 A. No.

23 Q. Have you ever experienced in  
24 your line of work a pressure gauge on a  
25 fire suppression system -- such as a tank

1 with a valve assembly we're discussing  
2 here -- where you observed the pressure  
3 gauge to not function properly?

4 A. Yes.

5 Q. Can you give us an example.

6 A. I just recently did some the  
7 other day. I sent them out for hydro,  
8 came back and filled 'em, go through all  
9 the procedure, like I've always done, put  
10 pressure to it of 200 pounds, 225, and  
11 tank -- nitrogen going in and no gauge  
12 reading, no gauge reading, devalve --  
13 depressurize it in replace the valve.

14 Q. And do you have experience,  
15 given your working knowledge of this  
16 industry, as to the various reasons why a  
17 pressure gauge would not function  
18 properly?

19 A. Multitude of things. It could  
20 have been -- well, first of all, you  
21 always check the gauge itself to make sure  
22 that it's intact, you know, the gauge --  
23 the -- all that gauge is is a needle, and  
24 if the needle is broken, bent, the glass  
25 is blown, that's your first sign that the

1 gauge is no good. The other part is that  
2 all it is is a small little orifice that  
3 is probably big as a paper clip. That air  
4 has to go through it and could be an  
5 obstruction, and so you basically start  
6 all over again.

7 Q. Now, when you reference an  
8 obstruction, what type of obstruction are  
9 you talking about?

10 A. It could be an obstruction of...  
11 anything. Chances -- not dirt, but just  
12 an obstruction of when it was originally  
13 made or when it was -- it could have been  
14 something maybe in the liquid. I --  
15 that's it. But to the -- the chances of a  
16 gauge going bad, on my experience --

17 Q. Low?

18 A. -- 1 out of 500. So...

19 Q. So isn't it -- how would it be  
20 that, in your experience, that tank would  
21 with a valve assembly such as this one,  
22 which only had air, it didn't have  
23 chemical --

24 A. Right.

25 Q. -- why would there be an

1 obstruction in the gauge?

2 A. There wasn't. Who said there  
3 was an obst...(sic)?

4 Q. I'm not saying there was.

5 A. There was no obstruction in the  
6 gauge.

7 Q. I'm not saying there was. I'm  
8 asking is it possible for a tank such as  
9 this one that's only filled with air to  
10 get an obstruction?

11 A. Probably not.

12 Q. And why do you say that?

13 A. What else would be in it but  
14 air? It had never saw liquid, never saw  
15 powder, never saw anything but air only,  
16 so there would be no obstruction.

17 Q. Now, as it pertains to those  
18 tanks, the ones that were used for the  
19 restaurant, and the one that was used for  
20 this, the one that was used in this event,  
21 do you know when was the last time those  
22 gauges were inspected?

23 A. The last time they were filled.

24 Q. And how would it have been  
25 inspected?

1           A.       When you go to fill it. There  
2       is no way to inspect the gauge. If the  
3       gauge -- if it's -- if it's flat line here  
4       and it goes to 12:00, the gauge is  
5       working. How -- there is no other way to  
6       check a gauge.

7           Q.       Have you ever heard the  
8       expression "calibration of a gauge" as  
9       part of maintenance or inspection?

10          A.       Not required.

11          Q.       I didn't -- I didn't ask you if  
12       it was required --

13          A.       It's not.

14          Q.       -- sir? My question was have  
15       you ever --

16          A.       Yes, I have heard of it. Yes.

17          Q.       Let me ask -- so you've heard  
18       the expression, "to calibrate", as part of  
19       maintenance or inspection? Yes?

20          A.       Yes.

21          Q.       Was there anything, any language  
22       on the tank or valve assembly in this case  
23       that would instruct users to maintain or  
24       inspect the pressure gauge?

25          A.       No.

1 Q. Are you familiar with the firm  
2 in the industry related to fire  
3 suppression systems and extinguishers, the  
4 acronym SDS, for -- is it a safety data  
5 set or --

6 A. Yes.

7 Q. What does it mean?

8 A. Safety data sheets.

9 Q. Now, did you have an  
10 understanding that extinguishers,  
11 including those from Pyro-Chem, provide  
12 SDS, safety data sheets, for compliance  
13 with OSHA?

14 A. Yes.

15 Q. In this case, as it pertained to  
16 this particular tank and valve assembly,  
17 was there an SDS that was within Oprandy's  
18 possession back in February of 2016?

19 A. For what?

20 Q. For the tanked valve assembly in  
21 this case, the one that was either -- the  
22 Pyro-Chem.

23 A. Yes, but why would you need -- a  
24 safety data sheet is only on the chemical  
25 that's involved.

1 Q. I understand.

2 A. Why do you need a safety data  
3 sheet on air?

4 Q. I'm not -- I don't have the  
5 answer.

6 A. I don't have it either.

7 Q. I only have questions.

8 A. I have safety data sheets for  
9 every single chemical that is in my  
10 possession at 49 Brookline Avenue.

11 Q. Understood. And back in  
12 February, you did --

13 A. I had it then. I've had it for  
14 probably ten years since it's been  
15 required.

16 Q. Thank you.

17 Did you have an understanding as  
18 to whether Mr. Foust had a Pyro-Chem  
19 certificate?

20 A. Continue.

21 Q. I'm sorry?

22 A. Oh. Ask again.

23 Q. Sure.

24 Did you have an understanding as  
25 to whether Mr. Foust had a Pyro-Chem

1 certificate?

2 A. Not required. No.

3 Q. And did you have an  
4 understanding as to whether Mr. Buono had  
5 a Pyro-Chem certificate?

6 A. No. Not required.

7 Q. So the answer is neither one of  
8 them --

9 A. No.

10 Q. Hold on. You just got to let me  
11 finish. It's for the benefit of the  
12 reporter. So it was your understanding  
13 that neither Mr. Foust or Mr. Buono had  
14 Pyro-Chem certificates?

15 A. True.

16 Q. Thanks.

17 A. Could I ask you a question on  
18 that?

19 Q. Yeah. I might not have the  
20 answer, but if you want.

21 A. What does this -- what does this  
22 Pyro-Chem have anything to do with --  
23 we're going off the subject. You are.

24 Q. Okay.

25 A. You're going way off the



1 subject. You go way off, you're going out  
2 of the scope, and you're not focusing on  
3 what we're here for.

4 Q. Alright. I appreciate your  
5 candor.

6 A. Well, I've been in this 40 years  
7 and I'm being asked questions that have  
8 nothing to do with pertaining to filling a  
9 simple tank of breathing air, bottom line.

10 Q. What was your understanding as  
11 to the pressure gauge being on the gauge  
12 175?

13 A. What was my --

14 Q. What was your understanding,  
15 what was your basis for believing the  
16 pressure gauge at full would indicate 175  
17 p.s.i.?

18 A. Because that's the way it came  
19 from the factory of Pyro-Chem.

20 Q. Had you ever -- okay.

21 MR. FROMSON: And so can I mark  
22 this.

23 (Plaintiff's Exhibit 1,  
24 photograph, marked for identification,  
25 this date.)

1           Q.       So do you have it in front of  
2       you, the exhibit?

3           A.       Correct.

4           Q.       I'd ask you to presume that that  
5       is a picture of the pressure gauge from  
6       the valve assembly on the day of the  
7       event. Will you do that for me, sir?

8           A.       Negative. It's not.

9           Q.       What makes you believe it's not?

10          A.       Because this is a 225-pound  
11       gauge and the tank on question was 175.  
12       So this has -- this has nothing to do with  
13       the accident.

14          Q.       And so if that reflects the  
15       pressure gauge that was provided to all  
16       the parties here from OSHA at their  
17       inspection site from Salt Lake City,  
18       shipped in a box to New York, you would --

19          A.       That's wrong.

20          Q.       -- your indication is they've  
21       got the wrong gauge?

22          A.       They've got the wrong gauge, and  
23       I can explain why.

24          Q.       Go ahead.

25          A.       Pyro-Chem designed their kitchen

1 suppression systems back in 2001, 2002.  
2 They increased their tank sizes, increased  
3 their liquid sizes to compensate for those  
4 tanks, and they also -- they also  
5 increased their tank pressures from 175 to  
6 225. You cannot buy from Pyro-Chem today  
7 a 175 pound p.s.i. tank of any liquid  
8 agent. Not available. Are they still out  
9 there? Yes. There are fire suppression  
10 systems still today that I still service  
11 and I still fill at 175 because they're  
12 still (indicating) "legal" in the  
13 industry.

14 That tank was a tank, they took  
15 a sample of what I had in my inventory,  
16 showing 225 pounds. That's not the --  
17 that's not the cylinder. If you find --  
18 if you can find a tank with the green  
19 collar on it from Pyro-Chem, that's a  
20 175-pound gauge on it. Because that came  
21 off of a cylinder that was a 2.4 gallon  
22 liquid, that could only take 175 pounds  
23 pressure.

24 Q. The other tanks that you had  
25 utilized at the restaurant, at Cosmo's,

1 approximately earlier, do you still have  
2 those in your possession?

3 A. Yes, I do.

4 Q. And I apologize if you told me,  
5 those were of the same p.s.i.?

6 A. 175.

7 Q. I would simply ask you not to  
8 throw them out; preserve them, please.

9 A. I still use them.

10 Q. Fantastic.

11 A. Thank you.

12 MR. FROMSON: Can we go off the  
13 record for a moment.

14 THE VIDEOGRAPHER: Sure. The  
15 time is 2:26. We're going off the  
16 record.

17 (Brief recess.)

18 THE VIDEOGRAPHER: The time is  
19 2:42. We're back on the record.

20 MR. FROMSON: I have no further  
21 questions at this time. Thank you  
22 very much for your candor today.

23 THE WITNESS: Thank you.

24 EXAMINATION BY MS. MOLINEAUX:

25 Q. Alright. Good afternoon. I'm

1 just going to jump in, probably jump  
2 around more than they have, because I'm  
3 trying to fill in some holes and -- I want  
4 to ask you: If Chris said in his  
5 statement that he was pushing down the  
6 valve on the cylinder, do you have an  
7 understanding of what he would be pushing  
8 on?

9 A. Yes. If you took this -- let me  
10 bring this up. If you took this main  
11 valve off, this part here, off --

12 Q. First, I just want to represent  
13 for the video that this is a tank that you  
14 had in your car and you brought in, it was  
15 one of the tanks that was filled the week  
16 before our incident. So it's not an exact  
17 match of the tank that we had in this  
18 incident?

19 A. Very close.

20 Q. But it's close?

21 A. Close.

22 Q. Okay.

23 A. Okay.

24 Q. Okay. So with that  
25 understanding...

1           A.       This male connection threads  
2       into the top of the valve. Okay? The  
3       reason it's on here is because, mainly so  
4       I don't lose it. If you took this off,  
5       you could push down on the disc which  
6       would open up the valve assembly, which  
7       will allow air in it. You can push down  
8       on it. You don't have to push down on it  
9       when you're filling it with air, because  
10      the air will flow either -- either way  
11      you'll get air into that cylinder.

12          Q.       Had you taught Chris to push  
13      down on that valve?

14          A.       I basically told him here's  
15      how -- here's how I do it, here's how you  
16      can do it. So basically, it was up to him  
17      how he filled it. Either way -- either  
18      way you task, you did this, you will get  
19      air into that cylinder.

20          Q.       Is it's appropriate to push down  
21      on that to get air in the cylinder?

22          A.       Yes.

23          Q.       Does it help air go into the  
24      cylinder faster?

25          A.       Proba-- I'm going to say yes.

1 Q. Okay. And you said that the  
2 valve in our -- on our subject cylinder  
3 had never been rebuilt; is that accurate?

4 A. That's accurate.

5 Q. Had it ever been taken apart, in  
6 any capacity, as far as you know?

7 A. No.

8 Q. And to the best of your  
9 knowledge, is the valve that was on there  
10 at the time this subject cylinder was  
11 being filled the same valve that  
12 originally came with the cylinder?

13 A. At my purchase, yes. That was  
14 on that valve when I acquired it through  
15 the purchase of Catskill Fire in 2014.

16 Q. Okay. I'm going to show you  
17 what we've previously marked as  
18 Defendant's Exhibit 6. What I'm  
19 particularly interested in you looking at  
20 are the numbers up here in the left corner  
21 of that OSHA -- oh, you're right, sorry --  
22 that OSHA read off the stampings of the  
23 cylinder. Do you have an understanding  
24 what those numbers represent?

25 A. Yes.

1 Q. Okay. Could you tell what they  
2 are.

3 A. DOT, Department of  
4 Transportation, 4 bravo whiskey 225.

5 Q. And what does 4 bravo whiskey  
6 225 mean to you?

7 A. That is from -- I'm not a DOT  
8 facility, but I'm going to say that is a  
9 lot number that Worthington manufactured  
10 and assigned to the Department of  
11 Transportation for this particular size  
12 and type of cylinder.

13 Q. Okay.

14 A. And the 225, I'm going to  
15 presume is --

16 Q. Well, I don't want -- I  
17 want -- I want what your understanding at  
18 the time would have been.

19 A. DO -- DOT 4BW is 225, those were  
20 the markings that were assigned by the  
21 manufacturer or by -- I think they would  
22 be assigned by DOT to the manufacturer to  
23 make this tank.

24 Q. Okay. Are there any other  
25 stampings on there?



1           A.       There is a number below it, it  
2       says Worth, which is Worthington, which is  
3       the manufacturer of the cylinder, 0898,  
4       which is the month and year of the  
5       manufacturing of that cylinder.

6           Q.       And I see there's one more set  
7       of numbers below the DOT4BW225?

8           A.       M4543. Like I said, I -- I'm  
9       not familiar with it, but I'm going to  
10      presume that could be a lot number from  
11      the manufacturer.

12          Q.       Okay. So would it surprise you  
13      to learn that the 225 is the listed  
14      service pressure of the tank?

15          A.       Don't know.

16          Q.       Does that surprise you?

17          A.       Probably not.

18          Q.       Okay. So, knowing the  
19      manufacturer's stampings list the service  
20      pressure at 225, what would you understand  
21      the cylinder could be filled to?

22          A.       225.

23          Q.       And, with that understanding,  
24      what would you expect the gauge on the  
25      cylinder to say?

1           A.       225.

2           Q.       And if on the day of the  
3       incident -- well, I'm assuming that, since  
4       you didn't recognize the 225 as being the  
5       fill pressure, you probably never had any  
6       conversations with Chris regarding the  
7       fill pressure being stamped on the  
8       cylinder?

9           A.       Correct.

10                  MS. STIGALL:  Objection to form.

11           Q.       At the time of the incident,  
12       going back to that day --

13           A.       Uh-hum.

14           Q.       -- did you ever an understanding  
15       what the 225 stamped on the cylinder  
16       meant?

17           A.       No.  I always went by pressure  
18       on the gauge.

19           Q.       So when you were filling a  
20       cylinder, you would look at the gauge to  
21       determine the fill pressure; is that  
22       correct?

23           A.       Correct.

24           Q.       And because you didn't have an  
25       understanding of what the 225 stamping on

1 the cylinder meant, you never had any  
2 conversations with Chris telling him that  
3 the service pressure may be stamped -- was  
4 stamped on the cylinder?

5 A. That's correct.

6 Q. Now, I want to ask you a little  
7 bit about setting the regulator when  
8 you're going to fill a cylinder.

9 You testified -- and correct me  
10 if I'm wrong, because it's kind of a  
11 paraphrase -- you testified that, when you  
12 go to fill a cylinder, you set the  
13 regulator, whether you're filling it with  
14 air or from the nitrogen tanks, to 25  
15 p.s.i. above its service pressure.

16 A. Correct.

17 Q. Correct. So, if you were  
18 filling a 175 p.s.i., you would set the  
19 regulator to 200?

20 A. Correct.

21 Q. And does that mean that the  
22 regulator only let's out 200 p.s.i. at a  
23 time? In other words, once 225 p.s.i. has  
24 moved through the regulator, does it shut  
25 off automatically?

1           A.       You can't get anymore air out  
2       because your regulator is stuck  
3       at two-twe-- you're set at 225. If you go  
4       to fill up -- it's as if you're filling a  
5       tire. You put 45 pounds in, once you hit  
6       45 pounds, it shuts off. This doesn't  
7       shut off. It just won't give you anymore  
8       pressure.

9           Q.       So no more pressure would come  
10       out the regulator?

11          A.       Correct, because it's set at  
12       225. It's a set regulator.

13          Q.       But is it a steady flow that  
14       keeps coming?

15          A.       Oh, yes --

16          Q.       Okay.

17          A.       -- until it --

18          Q.       Until you --

19          A.       -- hits --

20          Q.       -- go and turn --

21          A.       -- that --

22          Q.       -- it off?

23          A.       Until it hits that -- if you --  
24       if you run a flow of air and you're set at  
25       225, once it hits 225, you're gonna have

1 still air in that line, but you're not  
2 gonna move anymore than 225, because  
3 that's what the regulator is set at.

4 Q. Okay. I just wanted to clarify  
5 that. Okay.

6 And you had made a comment that  
7 the test tanks that were given to test the  
8 kitchen -- or the fire suppression  
9 systems -- were red and green; is that  
10 correct?

11 A. The tank in question, yes.

12 Q. What was your understanding of  
13 why it was red in green?

14 A. That's the way it was purchased  
15 when Catskill Fire bought it from  
16 Pyro-Chem as a test tank only.

17 Q. So, with your knowledge in the  
18 industry, it's your understanding that a  
19 kitchen fire suppression system that is  
20 painted red and green is to be used as a  
21 test tank only?

22 A. No.

23 Q. No?

24 A. Pyro-Chem tank only. I test  
25 other systems besides Pyro-Chem and

1 Pyro-Chem is the only one that has a green  
2 label on it, that particular tank.  
3 Everything else is whatever is out there.

4 Q. Have you ever seen another  
5 Pyro-Chem test tank that was red and  
6 green?

7 A. No.

8 Q. You didn't paint the tank, did  
9 you?

10 A. No, I did not.

11 Q. Do you know if -- I think you  
12 said you bought it from Rick. Do you know  
13 if he painted the tank green?

14 A. No. It came from -- according  
15 to my recollection --

16 Q. From Rick?

17 A. -- from what he told --  
18 Rick -- from what he told me, he bought  
19 that tank as a Pyro-Chem distributor from  
20 Pyro-Chem that color, the way it was.

21 Q. Okay.

22 MR. FROMSON: Are you going to  
23 ask him if he has any others exactly  
24 like this one?

25 MS. MOLINEAUX: You can ask him.

1 MR. FROMSON: Do you currently  
2 suppose any exemplary tanks just like  
3 the one that was in this event?

4 THE WITNESS: No. I got those  
5 instead (indicating).

6 BY MS. MOLINEAUX:

7 Q. And you had said that you were  
8 told by one of the firemen that -- who  
9 handled the call heard Chris say, "I  
10 didn't hear the air flow, so I opened the  
11 valve." Do you remember that?

12 A. Yes.

13 Q. And what valve do you understand  
14 that to be that he opened?

15 A. Between the two-stage regulator  
16 and probably six, seven, eight foot of air  
17 hose to the tank he was filling, through  
18 all the connections, there's a quarter --  
19 there's a ball valve, which is an on/off  
20 valve, and that's what he was using, you  
21 crack the valve, and that's when he said  
22 he didn't hear it, and pshwoot! full bore  
23 opened it.

24 Q. And that would be the  
25 quarter-turn ball valve that's in

1 Defendant's Exhibit 7 on the bottom?

2 A. Yes. You're correct.

3 Q. Thank you.

4 And may have said this, but I  
5 just want to clarify. You said that you  
6 had discussions with Chris that, if a  
7 cylinder is overpressurized, something  
8 will happen; is that correct?

9 A. Yes.

10 Q. And what is that something?

11 A. Well, A) if it's  
12 overpressurized, whether it's an air  
13 cylinder or a fire extinguisher,  
14 overpressurize it, you can't go out the  
15 door, because now it's overcharged, which,  
16 technically, everything is supposed to be  
17 in the straight up 12:00 position. If  
18 it's overpressurized, it's easy to put too  
19 much air in it or you weren't paying  
20 attention, which means you have to start  
21 the process over again and that that gauge  
22 has to be at the 12:00.

23 Q. Or what would be the danger of  
24 letting an overpressurized tank go out of  
25 the building?



1           A.       As a joke, I've always said, if  
2       it's overpressurized, you're just going to  
3       get a little more pressure to put out the  
4       fire, but, believe it or not, I've got  
5       inspectors who are nitpickers and say,  
6       "12:00. We're not taking 12:01 or 12:02.  
7       12:00." I've actually had 'em come from  
8       the factory, brand new, at 12:02, and I  
9       got -- right out of the box. So, it can  
10      happen. I've also had 'em come out of the  
11      box with no pressure on 'em. So it's a --  
12      it's a...

13       Q.       Did you have an understanding at  
14      the time of this incident that a tank that  
15      was overpressurized exploded?

16       A.       Yes. But I never, ever thought  
17      of it going -- happening, to this extent.

18       Q.       And why is that?

19       A.       Based experience and training, I  
20      just never forecasted anything ever to  
21      happen. You never -- you never expect the  
22      worst.

23       Q.       So you made comments that you  
24      are able to hydrotest low-pressure  
25      cylinders, but not DOT cylinders, because

1     you're not DOT certified --

2           A.       Yes.

3           Q.       -- I think is what you said?

4           A.       You have to have a retest  
5     facility --

6           Q.       Okay.

7           A.       -- a retest to license, which I  
8     don't have.

9           Q.       Is it your position that the  
10    cylinder in this case was not a  
11    low-pressure cylinder?

12          A.       Yes. It was a low-pressure  
13    cylinder, but it was a DOT low-pressure  
14    cylinder --

15          Q.       Okay.

16          A.       -- which, to be honest with you,  
17    all your kitchen system cylinders today,  
18    even the newer ones, are DOT cylinders,  
19    low-pressure.

20          Q.       What type of low-pressure  
21    cylinders would not be DOT?

22          A.       A company called Amerex Fire  
23    Extinguisher Company at one time made DOT  
24    low-pressure cylinders, portables, but I'm  
25    pretty sure -- they're still out there,

1 but I'm pretty sure that they don't make  
2 those cylinders anymore, but they're still  
3 out in the field. And is the only  
4 exemption to the rule. "Exception", I  
5 should say.

6 Q. What's the only exception?

7 A. Is the only exception, is  
8 Amerex. Everything is all non- -- all  
9 your fire extinguishers today and all  
10 your -- all your fire extinguishers,  
11 portables, now are non DOT low-pressure,  
12 except for this Amerex -- it must have  
13 been a badge in a year in the mid to late  
14 90's, but your kitchen suppression systems  
15 today, that you buy, are low-pressure, but  
16 they're DOT reg-- DOT cylinders. I send  
17 out 25, 30 a month, I rotate them out,  
18 send them out to a DO-- to retest 'em,  
19 which is a company that did this one  
20 (indicating).

21 Q. Okay. Now, I think you  
22 testified that the high-pressure cascade  
23 system that was used on that day was  
24 filtered, clean, breathable air. Would  
25 that be correct?

1           A.       Yes.

2           Q.       Why would you use filtered,  
3       breathable clean air to fill up a cylinder  
4       to do a balloon test that nobody was going  
5       to be breathing?

6           A.       That has nothing to do with it.  
7       That has -- that's not -- that's not why  
8       it was done. I could use anything. I  
9       could have used shop air, which -- I could  
10      use -- I could have used shop air, but I  
11      couldn't, because my shop air compressor  
12      only goes to 150. I needed 175. Yes, you  
13      could have used nitrogen, but I think, at  
14      the time, Chris specified to me that "I'm  
15      low on nitrogen, waiting for a delivery of  
16      tanks to come in, can I use air off the  
17      compressor?" I says, "Fine." Air is air.  
18      Air is air. Let's be real. And I said,  
19      "You know how to do it?" He says, "Yes;  
20      we've done it before." He says, "I know  
21      the procedure. I'll fill it." So...

22          Q.       Are you saying that conversation  
23      happened the day of the incident?

24          A.       It happened prior -- before this  
25      incident and the week before and weeks and

1 weeks before, when I was -- those tanks  
2 were probably always filled by those --  
3 that cascade system. You got to remember  
4 something, nitrogen is expensive,  
5 required -- required to be put in portable  
6 fire extinguishers, and there's a reason  
7 why. Breathing air -- for a test for an  
8 air tank, I could have gone to the gas  
9 station and put in 50 cents in the machine  
10 and gotten 175 air out of it. Air is air.  
11 It's only for breathing, it's only for an  
12 air test. That particular morning, A),  
13 like said before, my shop air compressor  
14 only goes to 150, I was low on nitrogen,  
15 he had stuff to do to fill, which would --  
16 prior to this test was a priority to fill  
17 fire extinguishers, so I says -- he said,  
18 "I want to fill it off the shop compressor  
19 or the cascade system." I says, "Fine."  
20 Same procedure. Just the air is air.

21 Q. So if your nitrogen had not been  
22 low, would you have used the nitrogen  
23 tanks?

24 A. That would have been his call,  
25 but, again, I had four tanks of multiple,

1 multiple quantities of air. Why would I  
2 not use a cascade system if the gauges and  
3 the procedures are right? Would I? It  
4 would have been his call.

5 MS. MOLINEAUX: I'm just looking  
6 through my notes.

7 THE WITNESS: Sure. Go ahead.

8 Q. Do you drug test your  
9 applicants?

10 A. No.

11 Q. As someone who has been working  
12 in this industry almost 30 years, why do  
13 you think this happened?

14 A. Huh! I think -- and my honest  
15 opinion -- that, based on what you -- I've  
16 told you before, with the arguing back and  
17 forth between Chris and Frank, I think  
18 there was a drug deal going down. I think  
19 something happened prior to that morning.  
20 Where on my -- where? It could have  
21 happened out of my office -- I don't  
22 know -- and I think that something went  
23 down, something was going to go down, I  
24 think there was a transaction of drugs or  
25 money, and Frank Buono can say what he

1     wants, but I think he went into that room,  
2     confronted Chris, Chris was distracted,  
3     and if you look at the OSHA findings, the  
4     bottom line was overpressurization of a  
5     cylinder due to carelessness.

6             It seems awful funny that I got  
7     a 36-year old man, who's very suave as far  
8     as mechanics and everything else, can fill  
9     the exact same tanks, same procedure, same  
10    this, this, this, one week ago, if not two  
11    years ago, and that morning something  
12    happens. He's filled 'em with other  
13    people in the room before, I've been in  
14    there watching him fill 'em, he's sitting  
15    with Robby, everybody. Distraction was on  
16    something else and it wasn't business  
17    related, and I think it was drug-related.  
18    That's my honest opinion as the employer.

19            Look, it's too -- it's too  
20    coincidental -- I could see if he just  
21    walked in the shop 30 days ago and I put  
22    him on something. But if you look at the  
23    big picture, the man was well rounded,  
24    he's done this before. It's not like I --  
25    you know, it's not like he didn't know

1     what he was doing. Something -- something  
2     caused it. Whether it was the heater,  
3     maybe, but if the heater was on, he still  
4     would have known to shut that gauge off,  
5     that machine off at 12:00, but to have  
6     somebody else talking to him or arguing  
7     about something else, yes, and I'm going  
8     to stick to that.

9           Q.     In Chris's statement to OSHA, he  
10    mentioned online training and courses. Do  
11    you know what training he would be talking  
12    about, specifically?

13          A.     Probably the in-house training  
14    that I would do. And let me explain how  
15    that works. I, as the owner of a company,  
16    through the association I belong to and  
17    all my training, I, as the employer,  
18    absorb all the training. I do 24, 30  
19    hours a year worth of training off  
20    premises to keep my certifications, and I  
21    would come back with the information and  
22    all the booklets and I would train my  
23    people. Okay.

24                   Just for instance, on this  
25    compressor, I learned, in the fire



1 service, I trained my guys as fire chief  
2 or as lieu-- captain and, in turn, when I  
3 bought the system, I trained whoever was  
4 involved.

5 I might have shown Robby -- her  
6 son worked for me. Robby might have seen  
7 me do it. Did he actually physically do  
8 it? Probably not. Chris, being that he  
9 was my shop guy, whether it was in my old  
10 building or new building, I would train  
11 him. And this is how it's done. You  
12 know, there's ways to do it.

13 But that -- I did all the  
14 training.

15 Q. So is it your position that  
16 Chris didn't engage in online training or  
17 courses?

18 A. No.

19 Q. Okay.

20 A. At the present time -- at that  
21 time, no.

22 Q. Okay. So, if he mentioned in  
23 his statement that you provided him a list  
24 of courses, you wouldn't know what courses  
25 he was talking about?

1           A.       I don't know what courses he was  
2     talking about, and, to schedule the  
3     courses, and, like I also said this  
4     before, being a single dad and when he was  
5     with his daughter, if I was going to  
6     schedule, I would have had to-- it would  
7     have been very difficult, due to the fact  
8     being a single dad and working with his  
9     daughter's schedule, single dad, that  
10    would have been a conflict, but there were  
11    courses. Would I have sent him on  
12    courses? I probably would have, down the  
13    road. But, like I said before, a lot of  
14    training he did in the shop was based on  
15    what I learned through my experience and I  
16    would just train everybody.

17          Q.       But I guess what I'm trying to  
18    understand, is there a list of courses  
19    that you keep that you hand out to  
20    employees?

21          A.       There is a course, I have sent  
22    my other guys out for classes, yes, and  
23    Chris just wasn't out there to go for any  
24    courses. There are courses available.

25          Q.       But I'm trying to -- I'm just

1     trying to gather, if Chris said in his  
2     statement, "Brian provided me with a list  
3     of courses," would you know what list he  
4     was speaking of?

5           A.       No.

6           Q.       Okay.

7                   MS. MOLINEAUX: I think that's  
8     all I have for now.

9                   MS. STIGALL: I don't have very  
10    many, so...

11                  THE WITNESS: More?

12                  MS. STIGALL: Yes. Sorry.

13    REEXAMINATION BY MS. STIGALL:

14           Q.       You purchased the tank when you  
15    purchased -- the cylinder at issue in this  
16    case, when you purchased --

17                  THE VIDEOGRAPHER: Is your mike  
18    on? I didn't mean to interrupt, but  
19    you might want to start that over.

20                  MS. STIGALL: Thank you.

21           Q.       I believe, if I remember  
22    correctly, you said you purchased the tank  
23    when you purchased the business in, what  
24    year was that?

25           A.       August of 2014, from Catskill

1 Fire.

2 Q. So, other than occasionally  
3 using the tank prior to that time, I take  
4 it that you would not be able to say  
5 whether a valve that's on a tank from 1998  
6 had ever been rebuilt prior to the time  
7 that you purchased it in 2014?

8 A. Yes, that's correct.

9 Q. So you really can't -- it could  
10 have been rebuilt in that time; you  
11 couldn't say one way or another?

12 A. Correct.

13 Q. Additionally, we were talking a  
14 little bit about the gauge in the case.  
15 Prior to you gaining possession in -- of  
16 the tank, could it be possible that, at  
17 some point, the gauge was switched out  
18 with another tank?

19 MR. FROMSON: Just objection as  
20 to form.

21 A. Could it have been? It wasn't  
22 done by me.

23 Q. I'm saying that you didn't take  
24 possession of the tank till 2014.

25 A. Correct.

1           Q.       So all I'm saying is, you can't  
2 rule out that, at some point, say a gauge  
3 got smashed, or damaged, or whatever, and  
4 the gauge was switched out on that tank --

5           A.       I can't say.

6           Q.       -- prior to your possession?

7           A.       I'm gonna say I can't say. I  
8 don't know.

9           Q.       Right. Are you aware that OSHA  
10 tested the gauge and found it to be  
11 working properly at the pressure it was  
12 supposed to be working at?

13          A.       Yes.

14          Q.       And that doesn't surprise you,  
15 does it?

16          A.       It doesn't.

17          Q.       Because you normally don't see  
18 gauges go bad --

19          A.       Exactly.

20          Q.       -- I think you said?

21                   It's my understanding from your  
22 testimony earlier that you trained Chris  
23 to look at the gauge, to be aware of what  
24 the fill pressure was for the cylinder.

25          A.       Correct.

1 Q. And that was a part of the  
2 procedure or the steps that you taught him  
3 in filling a cylinder at the Poseidon  
4 system --

5 A. Yes.

6 Q. -- correct?

7 So, according to the proper  
8 procedure that you taught him and what you  
9 saw him do over the years, would you have  
10 expected that on the morning of this  
11 incident he would have looked at that  
12 gauge as a part of his standard procedure  
13 and determined what the proper fill  
14 pressure was?

15 A. Yes.

16 Q. And he would have known he  
17 shouldn't fill it over that pressure  
18 that's shown on the gauge in the green?

19 A. Yes.

20 Q. I barely touched on Defendant's  
21 Exhibit 22, which is, basically, it look  
22 like an outside -- I don't know if this is  
23 a prescription or if it's something that a  
24 Fentanyl patch goes into. It's my  
25 understanding that that was -- and I'm

1 just trying to make sure I have this  
2 right. Is it correct that your wife, when  
3 she was looking for the keys to move  
4 Mr. Foust's car, either the day of the  
5 incident or the next day, found this in  
6 his things?

7 A. Yes.

8 Q. And was there at some point also  
9 a Fentanyl patch found?

10 A. That I can't say. I -- I can't  
11 say.

12 Q. Okay. Well, I saw something in  
13 notes that was in that spiral notebook --

14 A. Okay.

15 Q. -- that was put together, and  
16 maybe I'll just ask you whose handwriting  
17 it is. If you can just look at where it  
18 says "Note", there's a star, and can you  
19 tell me whose handwriting that is.

20 A. "Note: Fentanyl patch 100  
21 milligrams was found here at our office,  
22 including one used one in Chris's coat  
23 pocket." This was witnessed by several  
24 people: Bruce Pennings, Rick -- these are  
25 employers -- Rick Dillon, Robert Hawkins,

1     myself, and Patty. That's Patty's  
2     penmanship. That's her writing.

3             We were looking for the keys to  
4     his car that day, so the first thing you  
5     do is, you start with his coat.

6             Q.     And according to this, in the  
7     coat pocket, shortly after the incident,  
8     you found a Fentanyl patch 100 milligrams,  
9     and including a used one in Chris's coat  
10    pocket.

11            A.     Yes.

12            Q.     Did Chris ever mention to you  
13    being on Fentanyl?

14            A.     Not to my knowledge.

15            Q.     And then we talked a little bit  
16    before about the arguing that was going  
17    on, or that you heard was going on prior  
18    to this incident.

19                    Can you read this. It says  
20    "Thursday..." -- start -- just read  
21    slowly for the court reporter, starting at  
22    "Thursday, February 18th..."

23                    First, whose handwriting is  
24    that?

25            A.     First of all, that's Patty --



1 Q. Your wife.

2 A. -- Scott, my wife.

3 "Thursday, February 18th.

4 Employee, Kimberly Tremberger. Kimberly  
5 arrives at the office every morning at  
6 9:15, 9:30. She states that Chris and  
7 Frank were verbally fighting every morning  
8 that week of the accident. When I, Patty,  
9 arrived at the office at 10:00 a.m., they  
10 did not raise their voices at all."

11 Again, what's this -- what's the  
12 fighting about? It wouldn't be about fire  
13 extinguishers.

14 Q. Are you aware that, when OSHA  
15 tested the cylinder, they didn't find any  
16 type of defect in terms of the cylinder  
17 itself?

18 A. Yes. I'm aware of that.

19 Q. And are you aware that they  
20 found that it was simply overpressurized  
21 to the extent that it eventually ruptured?

22 A. Yes.

23 MS. STIGALL: I think that's all  
24 I have. Thank you.

25 THE VIDEOGRAPHER: Okay. Please

stand by. The time is 3:13. We're  
going off the record. This is the end  
of Media File No. 4 and that concludes  
this deposition.

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C E R T I F I C A T I O N

I, ABNER D. BERZON, a Registered Professional Reporter, Certified Realtime Reporter and Notary Public, do hereby certify that the foregoing witness, BRIAN SCOTT, was duly sworn on the date indicated, and that the foregoing is a true and accurate transcription of my stenographic notes.

I further certify that I am not employed by nor related to any party to this action.



ABNER D. BERZON, RPR, CRR

Notary Public, State of New York  
No. 01BE6303311  
Qualified in New York County  
Commission Expires 5/12/18

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